

United States Probation Office
for the District of Utah

Report on Offender Under Supervision

Name of Offender: **Tyrell Kelly Voeltz**

Docket Number: **1:11-CR-00016-001-TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell**
Senior U.S. District Judge

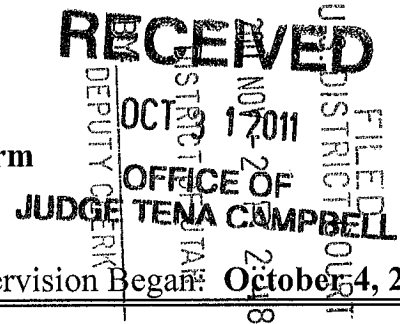
Date of Original Sentence: **August 31, 2011**

Original Offense: **Unlawful User or Addict in Possession of a Firearm**

Original Sentence: **Time Served/36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **October 4, 2011**



SUPERVISION SUMMARY

The defendant was sentenced on August 31, 2011, and as a special condition, was ordered to complete the Men's Recovery Treatment Center program. It is my understanding the defendant was also being held on a state matter with the anticipation he would also be ordered to complete the inpatient treatment program on the state matter. The defendant, however, was released from custody without participating in the inpatient treatment program coordinated through the jail and is now unable to complete the treatment program.

The defendant has been referred for outpatient substance abuse and mental health treatment and has scheduled an evaluation. The defendant is also being drug tested randomly. It is respectfully recommended the defendant not be required to complete the Men's Recovery Treatment Center program as ordered and that his substance abuse treatment and mental health treatment needs be addressed through a contract provider, which has already been arranged.

This information has been discussed with Branden B. Miles, the lead attorney for the United States in this case, who indicated he has no objection or concern with the modification as long as the defendant is participating in some type of treatment.

If the Court desires more information or another course of action, please contact me at (801) 625-5680, ext. 1021.

I declare under penalty of perjury that the foregoing is true and correct.

Dusten Russell
U.S. Probation Officer
Date: October 27, 2011

THE COURT:

- ☒ Approves the request noted above
☐ Denies the request noted above
☐ Other

Tena Campbell
Honorable Tena Campbell
Senior U.S. District Judge

Date: _____

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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES JAMES BALE,

Defendant.

**ORDER GRANTING
MOTION TO CONTINUE**

Case No. 1:11-CR-00085

Judge Ted Stewart

Based upon the foregoing motion to continue and good cause shown;

It is hereby ORDERED that the trial currently scheduled for November 9, 2011, at 8:30 a.m., is stricken;

It is further ORDERED that the trial is continued to this 19th day of December, 2011, at 8:30 a.m.

Specifically, the Court finds as follows:

1. The defendant is charged with two counts of Possession of Methamphetamine with Intent to Distribute, in violation of 21 U.S.C.A. § 841(a)(1), two counts of Possession of Firearm in Furtherance of Drug Trafficking Offense, in violation of 18 U.S.C.A. § 924(c), two counts of Felon in Possession of a Firearm, in violation of 18 U.S.C.A. § 922(g)(1), and two counts

Unlawful User in Possession of a Firearm, in violation of 18 U.S.C.A. § 922(g)(3). Under these provisions, defendant is facing a minimum mandatory sentence of 10 to 25 years in prison.

2. Counsel for the defendant was in trial in United States v. Kepa Maumau, case no. 2:08cr-758, before Judge Tena Campbell, from September 6, 2011 through October 6, 2011 thus making counsel unable to prepare for trial in the above-entitled case.

3. In order to effectively represent the defendant's interest at trial, in plea negotiations and in sentencing, more time is necessary for both parties to review defendant's case.

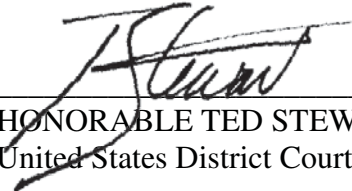
4. Counsel for the Defendant and the Government have exercised due diligence in this matter. The Government has provided and the defendant has reviewed the entire discovery. Counsel for the Government and defense counsel are currently in the midst of plea negotiations. On October 19, 2011, defense counsel prepared and submitted a lengthy and detailed offer of settlement to the Government outlining mitigation factors and evidentiary issues. The Screening Committee at the United States Attorney's Office has not, to date, made a decision.

5. Assistant United States Attorney, Nathan Lyon, has stipulated to a continuance in this matter via telephone.

For the reasons listed above, the Court finds that the ends of justice served by granting the requested continuance, outweigh the best interest of the public and the defendant in a speedy trial and therefore, the time from the stricken trial date to the new trial date is excluded from the computation of time required under the Speedy Trial Act, pursuant to 18 U.S.C. § 3161(h)(8)(A).

DATED this 1st day of November, 2011.

BY THE COURT:



HONORABLE TED STEWART
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ANTHONY MORA, Defendant.	ORDER TO CONTINUE JURY TRIAL Case No. 1:11-CR-103 TS
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Based on the Amended Motion to Continue the Jury Trial filed by Defendant in the above-entitled case, and good cause appearing, the court makes the following findings:

1. Defense counsel for Mr. Mora needs additional time to investigate enhancement information that might apply in this case.
2. Counsel for the Defendant believes that this case can be resolved by plea negotiations and the Government and the Defendant are still in the process of negotiating a resolution of this case. Further, should this case not be resolved by a plea, counsel for the Defendant requests additional time to prepare for trial.
3. Assistant United States Scott B. Romney has stipulated that he has no objection to a continuance in this matter.
4. The ends of justice are best served by a continuance of the trial date, and the ends of justice outweigh the interest of the public and the Defendant to in speedy trial.

Based on the foregoing findings, it is hereby:

ORDERED

The Jury Trial previously scheduled to begin on November 7, 2011, is hereby continued to the 9th day of January, 2012, at 8:30 am. Pursuant to 18 U.S.C. § 3161(h), the Court finds that the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date set forth above is excluded from speedy trial computation for good cause.

Dated this 2nd day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read "T. Stewart", is written over a horizontal line.

HONORABLE TED STEWART
United States District Court Judge

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

SHAWN H. RAY, an individual; GABRIEL
M. STEWART, an individual; LORI
POULSEN, an individual; JAMES DALLIN,
an individual; DEREK HOLT, an individual;
and ERIC HUNTER, an individual;

Plaintiffs,

- vs -

WAL-MART STORES, INC., a Delaware
Corporation,

Defendant.

SCHEDULING ORDER

Case No. 1:11-cv-00104-PWM

Judge Dee Benson
Magistrate Judge David Nuffer

The parties appeared for an Initial Pretrial Scheduling Conference before Magistrate Judge David Nuffer, on October 12, 2011 at the hour of 10:30 a.m. (docket #26). Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judgeⁱ received the Attorney Planning Reports filed by counsel, and heard argument as to dates and deadlines not agreed upon. The following dates and deadlines are now scheduled by Order of the Court. The times and deadlines set forth herein may not be modified without the approval of the Court and a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

1.	PRELIMINARY MATTERS	DATE
	Nature of claims and any affirmative defenses:	
a.	Was Rule 26(f)(1) Conference held?	<u>08/15/11 & 08/25/11</u>
b.	Have Attorney Planning Meeting Forms been submitted?	<u>08/29/11</u>
c.	Rule 26(a)(1) initial disclosure completed, including damage calculation from Plaintiffs	<u>10/17/11</u>
d.	The parties shall exchange a list of deponents; including the role of deponents, where they live and whether or not each deponent is under that party's control	<u>10/31/11</u>
e.	The parties should meet or confer by telephone to plan deposition testimony of named deponents. If the parties have problems with the number of deponents requested by either side, they should try to reach an agreement.	<u>11/10/11</u>
2.	DISCOVERY LIMITATIONS	NUMBER
a.	Maximum Number of Depositions by Plaintiffs	<u>25</u>
b.	Maximum Number of Depositions by Defendant	<u>25</u>
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>7</u>
d.	Maximum Interrogatories by any Party to any Party	<u>45</u>
e.	Maximum requests for admissions by any Party to any Party	<u>45</u>
f.	Maximum requests for production by any Party to any Party	<u>45</u>
3.	AMENDMENT OF PLEADINGS/ADDING PARTIESⁱⁱ	DATE
a.	Last Day to File Motion to Amend Pleadings	<u>11/01/11</u>
b.	Last Day to File Motion to Add Parties	<u>11/01/11</u>

4.	RULE 26(a)(2) REPORTS FROM EXPERTSⁱⁱⁱ		DATE
a.	Plaintiff		<u>06/29/12</u>
b.	Defendant		<u>07/23/12</u>
c.	Counter reports		<u>08/13/12</u>
5.	OTHER DEADLINES		DATE
a.	Discovery to be completed by:		
	Fact discovery		<u>05/31/12</u>
	Expert discovery		<u>09/14/12</u>
b.	Supplementation of disclosures under Rule 26(a)(3) and of discovery under Rule 26(e)		<u>09/30/12</u>
b.	Deadline for filing dispositive or potentially dispositive motions		<u>10/12/12</u>
6.	SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION		DATE
c.	Evaluate case for Settlement/ADR on		<u>09/30/12</u>
d.	Settlement probability: Fair		
7.	TRIAL AND PREPARATION FOR TRIAL	TIME	DATE
a.	Disclosure of Witnesses and Exhibits		
	Plaintiff		<u>02/08/13</u>
	Defendant		<u>02/22/13</u>
b.	Special Attorney Conference ^{iv} on or before		<u>03/08/13</u>
c.	Settlement Conference ^v on or before		<u>01/30/13</u>
d.	Final Pretrial Conference	<u>2:30 p.m.</u>	<u>03/19/13</u>
e.	Trial	<u>Length</u>	
	Jury Trial	<u>15 days</u>	<u>8:30 a.m. 04/15/13</u>

8. OTHER MATTERS

- a. No “black out” period will be honoured for Defendant. No immunity from discovery exists for either party at any time during the time period encompassed in this Scheduling Order.
- b. Counsel should contact chambers staff of the judge presiding in the case regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Signed: November 2, 2011

BY THE COURT:



DAVID NUFFER
U.S. Magistrate Judge

Approved as to form:

KATHLEEN TOTH
Attorney for Defendant

ⁱ The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

ⁱⁱ Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

ⁱⁱⁱ A party shall disclose the identity of each testifying expert and the subject of each such expert’s testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

^{iv} The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

^v The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding

settlement is available in person or by telephone during the Settlement Conference.

United States Probation Office
for the District of Utah

Report on Offender Under Supervision

Name of Offender: **Cameron Powers Cox**

Docket Number: **2:05-CR-00670-001-TC**

Name of Sentencing Judicial Officer: **Honorable Tena Campbell**
Senior U.S. District Judge

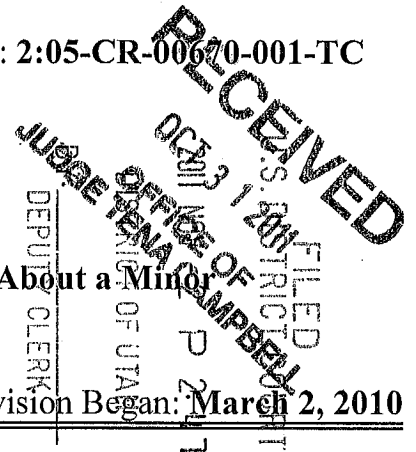
Date of Original Sentence: **March 20, 2006**

Original Offense: **Use of Interstate Facility to Transmit Information About a Minor**

Original Sentence: **57 Months BOP/120 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Began: **March 2, 2010**



SUPERVISION SUMMARY

The defendant recently requested he be allowed to reside with his girlfriend. The defendant's girlfriend has two young boys and has recently attended classes and been approved as a supervisor by the defendant's sex offender therapist at the Center for Family Development. The defendant's therapist was contacted and feels the defendant does not pose a risk as the children are male and such a living arrangement allows the defendant the ability to progress and move on with a normal life.

The defendant's girlfriend has been advised of the risks involved and indicated she feels comfortable that her children are safe around the defendant. Therefore, the probation office has deferred to the judgment of the sex offender therapist and allowed such a living arrangement.

In an attempt to provide the defendant with every opportunity to be successful on supervision, it is respectfully recommended that the defendant be allowed to reside with two individuals who are under 18 years of age.

If the Court desires more information or another course of action, please contact me at 801-535-2734.

I declare under penalty of perjury that the foregoing is true and correct.

Matt Morrill
U.S. Probation Officer
Date: October 28, 2011

THE COURT:

- ☒ Approves the request noted above
☐ Denies the request noted above
☐ Other

Tena Campbell

Honorable Tena Campbell
Senior U.S. District Judge

Date: Nov 2, 2011

FILED
U.S. DISTRICT COURT

2011 NOV -2 P 2:50

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

DISTRICT OF UTAH, NORTHERN DIVISION

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA,

:

2:05 CR 00857

Plaintiff,

:

vs.

:

ORDER GRANTING

~~MOTION TO CONTINUE~~

KASSI ANNE MCARTHUR,

:

~~SENTENCING HEARING~~

Defendant.

Based on the Motion of the United States, and with good cause appearing, it is hereby ORDERED that the Office of Pretrial Services releases the Presentence Report in the above-captioned matter to the United States.

DATED this 2 day of Nov, 2010.



TENA CAMPBELL

United States District Judge

SHARON L. PRESTON (UT 7960)
Attorney for Defendant
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Telephone: (801) 269-9541
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. CLAIR COX , Defendant.	ORDER TO CONTINUE SENTENCING Case No. 2:06-CR-315 Judge Clark Waddoups
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Based on Defendant's Motion and good cause appearing therefore; IT IS HEREBY ORDERED that the sentencing in this matter is continued until 9th day of January, 2012 at 2:30 p.m.

DATED this 2nd day of November, 2011.

BY THE COURT:



Judge Clark Waddoups
US District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

GEORGE LOPEZ, Plaintiff, vs. ADMINISTRATIVE OFFICE OF THE COURTS; and KATHY ELTON, Defendants.	ORDER and MEMORANDUM DECISION Case No. 2:07-CV-571
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Plaintiff George Lopez brought several claims against the Administrative Office of the Courts (AO) and Kathy Elton. Mr. Lopez alleges breach of contract; breach of implied contract; breach of the implied covenant of good faith and fair dealing; causes of action under 42 U.S.C. § 1983 for violation of his equal protection rights and procedural due process rights; and breach of public policy. Defendants have now filed a motion for summary judgment on all causes of actions.

For the reasons set forth and as more fully detailed below, Defendants' Motion for Summary Judgment (Dkt. No. 88) is GRANTED.

BACKGROUND

The Alternative Dispute Resolution (ADR) Department of the AO manages an ADR roster and a roster for the Co-Parenting Mediation Program (the CMP roster). Mr. Lopez is currently on the ADR roster and was, until 2006, on the CMP roster. Qualified mediators may apply to be placed on the ADR roster, but the CMP roster does not have a similar application process. Rather, mediators are selected or invited to be on the CMP roster.

In the fall of 1998, Ms. Elton joined the AO as a Program Manager in the ADR Program. Ms. Elton was promoted to ADR Director in 2000, where she served until 2008. As the ADR Director, Ms. Elton oversaw the ongoing implementation and administration of the CMP roster. In 2004, the CMP Program Manager Guy Galli drafted a “Best Practices” document with the collaboration of Ms. Elton and AO Assistant Director Richard Schwermer. The Best Practices document identifies a rotational basis for selecting mediators. But because of deadlines imposed by the court for scheduling mediation and the availability of mediators, strict adherence to a rotation was impractical.

During 2006, Ms. Elton became concerned about Mr. Lopez’s performance as a mediator. First, Ms. Elton learned that Mr. Lopez had sent a letter to parties seeking mediation. This was in violation of the ethical rule prohibiting direct contact with represented parties. Then, in July 2006, Ms. Elton received an unfavorable evaluation for a CMP mediation conducted by Mr. Lopez.¹ Approximately one month later, Ms. Elton received another unfavorable evaluation for Mr. Lopez indicating that Mr. Lopez had made “findings” during the mediation process and had made a recommendation that potentially involved more billable hours to the clients. In response to these evaluations, Ms. Elton reviewed Mr. Lopez’s files. She contacted him to discuss the apparent ethical violations alleged against him, but Mr. Lopez insisted that no ethical violation occurred.

After the attempted discussion with Mr. Lopez, Ms. Elton consulted with the AO Counsel Bret Johnson, Mr. Schwermer, and then-CMP Program Manager Philip Sherman, to determine

¹ Ms. Elton later discussed this evaluation with Mr. Lopez and, in view of his explanations, agreed that the concerns were resolved.

the appropriate course of action. Based on this consultation, Ms. Elton sent a Mr. Lopez a letter of removal on August 8, 2006, telling Mr. Lopez that effective August 16, 2006, he would be removed from the CMP roster.

On August 21, 2006, Mr. Lopez submitted a memorandum in response to the letter of removal. After receiving this memorandum, Ms. Elton notified the Judicial Council ad hoc Committee (the Committee) of the complaints against Mr. Lopez and the action she had taken. The Committee appointed a three-person ethics panel that reviewed the unfavorable evaluations and Ms. Elton's decision. Following the review, the ethics panel requested a hearing with Mr. Lopez, which was held on October 4, 2006. The ethics panel issued its findings of fact and decision from the hearing on November 29, 2006. The panel found Mr. Lopez in violation of the Utah Rules of Court Annexed Alternative Dispute Resolution.

Before the investigation of Mr. Lopez, Ms. Elton had investigated only two other individuals on the CMP roster. Neither of the previous investigations involved ethical issues and both were handled through a conversation with the involved mediators.

After the ethic panel's decision, Mr. Lopez made three requests to be reinstated to the CMP roster. The first request was made in January 2007, the second in June 2007, and the third in September 2007. After the first request, Ms. Elton reviewed a complaint from another CMP participant that Mr. Lopez had exceeded his role as a neutral facilitator in the participant's case during June 2006 to April 2007. In July 2007, Ms. Elton responded to and denied Mr. Lopez's first two requests for reinstatement. The Management Committee of the Judicial Counsel reviewed and denied Mr. Lopez's third and final request for reinstatement.

ANALYSIS

Standard of Review

Summary Judgment

The court grants summary judgment when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The court “view[s] the evidence and make[s] all reasonable inferences in the light most favorable to the nonmoving party.” N. Natural Gas Co. v. Nash Oil & Gas, Inc., 526 F.3d 626, 629 (10th Cir. 2008).

Qualified Immunity

The doctrine of qualified immunity protects government officials “from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). “Once a defendant raises the defense of qualified immunity as a defense to an action, ‘[t]he plaintiff carries the burden of convincing the court that the law was clearly established.’” Powell v. Mikulecky, 891 F.2d 1454, 1457 (10th Cir. 1989) (quoting Pueblo Neighborhood Health Ctrs., Inc. v. Losavio, 847 F.2d 642, 645 (10th Cir. 1988)).

“Ordinarily, in order for the law to be clearly established, there must be a Supreme Court or Tenth Circuit decision on point, or the clearly established weight of authority from other courts must have found the law to be as the plaintiff maintains.” Weigel v. Broad, 544 F.3d 1143, 1153 (10th Cir. 2008) (quoting Cruz v. City of Laramie, 239 F.3d 1183, 1187 (10th Cir. 2001)). This does not require that the plaintiff show that the very act in question was previously held unlawful. Rather, the contours of the law “must be sufficiently clear that a reasonable

official would understand that what he is doing violates that right.” Hope v. Pelzer, 536 U.S. 730, 739 (2002).

Breach of Contract and Breach of Implied Contract

“Any claim for breach of contract must be predicated on the existence of an express or implied contract.” Buckner v. Kennard, 2004 UT 78, ¶ 31, 99 P.3d 842. “An express or implied-in-fact contract results when ‘there is a manifestation of mutual assent, by words or actions or both, which reasonably are interpretable as indicating an intention to make a bargain with certain terms or terms which reasonably may be made certain.’” Heideman v. Washington City, 2007 UT App. 11, ¶ 25, 155 P.3d 900 (quoting Rapp v. Salt Lake City, 537 P.2d 651, 654 (Utah 1974)). Although the existence of an implied contract is a factual question, “the court retains the power to decide whether, as a matter of law, a reasonable jury could find that an implied contract exists.” Sanderson v. First Sec. Leasing Co., 844 P.2d 303, 304 (Utah 1992).

There is no evidence that Mr. Lopez had an express employment contract with the AO. But Mr. Lopez contends that he had an implied contract for mediation services with the AO. According to Mr. Lopez, the implied contract “manifested in various agreements, memoranda, policies and procedural notices.” (Lopez Mem. Opp. [Dkt. No. 100] at 15.)

Although employment of public employees is typically governed by statute and not contract, “circumstances may exist where the government voluntarily undertakes an additional duty beyond its normal obligation to the employee, in which case an implied contract arises.” Canfield v. Layton City, 2005 UT 60, ¶ 16, 122 P.3d 622 (internal quotations omitted). Such an implied contract may “arise from a variety of sources, including the conduct of the parties announced *personnel policies*, practices of that particular trade or industry, or other

circumstances.” Id. ¶ 17 (quoting Knight v. Salt Lake County, 2002 UT App. 100, ¶ 2, 46 P.2d 247). In Canfield, the court held that the plaintiff had sufficiently pled a claim for breach of an implied employment contract because the plaintiff alleged that through the personnel policy the employer voluntarily undertook an additional duty and later breached that duty. Id. ¶¶ 22, 24.

Here, Mr. Lopez relies on the Best Practices document to show an implied contract existed. But there is no evidence that through the Best Practices document the AO undertook any additional duty. Mr. Lopez even admits that the AO never established procedures for the review and evaluation of the ADR program and the performance of ADR providers. The Best Practices document standing alone is not “a manifestation of mutual assent, by words or actions or both, which reasonably are interpretable as indicating an intention to make a bargain with certain terms or terms which reasonably may be made certain” as required to create an implied contract. See Heideman, 2007 UT App. 11, ¶ 25. Because there is no evidence that the AO undertook an additional duty through the Best Practices document, the Defendants are entitled to summary judgment on Mr. Lopez’s breach of contract claims.

Breach of the Implied Covenant of Good Faith and Fair Dealing

Because there was no contract, there was necessarily no breach of the covenant of good faith and fair dealing. Heideman, 2007 UT App. 11, ¶ 27 n.15.

42 U.S.C. § 1983 – Equal Protection

Mr. Lopez’s equal protection claim appears to be based on a “class of one.” Mr. Lopez has identified no other class to which he belongs.

To establish a “class of one” claim, the plaintiff must show that he or she “has been intentionally treated differently from others similarly situated and that there is no rational basis

for the difference in treatment.” Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000).

Here, there is no evidence that any other person was similarly situated to Mr. Lopez. Mr. Lopez contends that there is a question of fact as to whether others who were similarly situated were treated more fairly. But Mr. Lopez does not point to any facts that would dispute Ms. Elton’s statement that there had been only two other individuals whom she investigated and that neither investigation involved ethics violations. Rather, Mr. Lopez asserts that he “is without information to know the truth of this statement.” (Lopez Mem. Opp. [Dkt. No. 100] at 9 ¶¶ 42-43.) This statement is not enough to create a genuine dispute of fact, especially given that discovery has closed in this case.

Because it is undisputed that no other mediators have been investigated for ethics violations, Mr. Lopez cannot show that he was treated differently from others who were similarly situated. Accordingly, Defendants are entitled to summary judgment on Mr. Lopez’s equal protection claim. The court need not address the second prong of the qualified immunity analysis—whether the law was clearly established.

42 U.S.C. § 1983 – Due Process

“The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment’s protection of liberty and property.” Bd. of Regents v. Roth, 408 U.S. 564, 569 (1972).

Property Interest

As a threshold matter, the court must determine whether Mr. Lopez has a protected property interest in having his name on the CMP roster. See Fed. Lands Legal Consortium v. United States, 195 F.3d 1190, 1195 (10th Cir. 1999). “To have a property interest in a benefit, a

person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.” Bd. of Regents, 408 U.S. at 577. Whether a claim of entitlement exists is determined according to state law.

Mr. Lopez contends that the Best Practices rotational policy gave him a property interest in remaining on the CMP roster. “The existence of a property right in such a case turns on whether the alleged claim of entitlement is supported or created by state law such as a state statute or regulatory scheme or decisional law.” Veile v. Martinson, 258 F.3d 1180, 1185 (10th Cir. 2000) (quoting Morely’s Auto Body, Inc. v. Hunter, 70 F.3d 1209, 1216-17 (11th Cir. 1995)).

In Veile, the plaintiffs claimed a constitutionally protected property interest in a rotation policy. Id. at 1183. The county coroner had established a policy requiring the referral of coroner cases to two mortuaries on an odd- and even-month rotating basis. Id. This policy, the plaintiffs alleged, created a protected property interest in the referrals. Id. The Tenth Circuit found that the most analogous case law was that addressing tow truck/wrecker rotational policies utilized by law enforcement organizations to deal with auto accidents. Id. at 1185. In one such case, the Tenth Circuit had held that an Oklahoma statute requiring certain cities to make wrecker referrals ““on an equal basis as nearly as possible”” created a property interest in wrecker referrals. Abercrombie v. City of Catoosa, 896 F.2d 1228, 1231-32 (10th Cir. 1990). The Tenth Circuit then adopted the principle established by the Eleventh Circuit in Morely’s Auto Body (examining the decision in Abercrombie, its own case law, and other circuit case law): whether there is a property right in a rotational policy depends on whether the claim of entitlement is supported or

created by state law. Veile, 258 F.3d at 1185.

Applying the principle announced by the Eleventh Circuit, the Veile court found that the “rotation policy does not give rise to a constitutionally protected property interest, because any expectations arising from the rotation policy are not grounded in Wyoming law.” Id. at 1186. Rather, the expectation was based on the coroner’s policy itself. Id. The principle adopted by the Tenth Circuit illustrates the difference between the Abercrombie case and the Veile case: in Abercrombie, the rotational policy was based on an Oklahoma statute, whereas in Veile, the coroner’s rotation policy had no ground in Wyoming state law.

Here, Mr. Lopez contends that the policy established in the Best Practices document creates a protected property interest in remaining on the roster. Similar to Veile, Mr. Lopez has not cited, nor has the court found, any Utah statute, regulation, administrative rule, or case law that may be construed to establish his entitlement to receive CMP mediation opportunities. Rather, he claims that the Best Practices policy itself creates the alleged property interest. Because, like in Veile, any expectation arising from the rotation policy is not grounded in Utah law, Mr. Lopez does not have a constitutionally protected property interest. Accordingly, the court need not decide whether the law was clearly established.

Liberty Interest

The Fourteenth Amendment’s due process clause entitles a public employee to certain procedures when his government employer threatens his liberty interest in his “good name and reputation as it affects his protected property interest in continued employment.” Workman v. Jordan, 32 F.3d 475, 480 (10th Cir. 1994). In Workman, the Supreme Court set forth a four-part test that a plaintiff must satisfy for a liberty-interest claim:

First, to be actionable, the statements must impugn the good name, reputation, honor, or integrity of the employee. Second, the statements must be false. Third, the statements must occur in the course of terminating the employee or must foreclose other employment opportunities. And fourth, the statements must be published. These elements are not disjunctive, all must be satisfied to demonstrate deprivation of the liberty interest.

Id. at 481 (citations omitted).

Here, there is no evidence of several of the required elements. First, as discussed above, there is no evidence that Mr. Lopez was employed by the AO. Second, there is no evidence that Ms. Elton made any false statements. Accordingly, there is no evidence that any such statements were made in the course of terminating Mr. Lopez or that they foreclosed other employment opportunities. Similarly, there is no evidence that any such statements were published.

Because there is no evidence on several of the required Workman elements, Defendants are entitled to summary judgment on Mr. Lopez's due process claim based on his liberty interest. The court need not decide whether the law was clearly established.

Breach of Public Policy

"[A]ll employers have a duty not to terminate any employee, 'whether the employee is at-will or protected by an express or implied employment contract,' in violation of a clear and substantial public policy." Ryan v. Dan's Food Stores, Inc., 972 P.2d 395, 404 (Utah 1998).

To make out a prima facie case of wrongful discharge, an employee must show (i) that his employer terminated him; (ii) that a clear and substantial public policy existed; (iii) that the employee's conduct brought the policy into play; and (iv) that the discharge and the conduct bringing the policy into play are casually connected.

Id.

As discussed above, there was no employment contract, express or implied, between Mr. Lopez and the AO. Accordingly, Mr. Lopez could not have been terminated in violation of

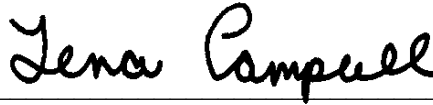
public policy. Further, there is no evidence that there was a “clear and substantial public policy.” For these reasons, Defendants are entitled to summary judgment on Mr. Lopez’s breach of public policy claim.

CONCLUSION

For the foregoing reasons, Defendants’ Motion for Summary Judgment (Dkt. No. 88) is GRANTED.

SO ORDERED this 2nd day of November, 2011.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style. The first name "Tena" is written above the last name "Campbell".

TENA CAMPBELL
United States District Judge

FILED
U.S. DISTRICT COURT
U.S. DISTRICT COURT

2011 NOV - 1 A 7:34
UNITED STATES OF AMERICA

Judgment in a Criminal Case

v.

DISTRICT OF UTAH

(For Revocation of Probation or Supervision or Release) DISTRICT OF UTAH

John Patrick Wolfe

BY:

DEPUTY CLERK

BY:

DEPUTY CLERK

Case No. DUTX 2:08-cr-000463-001 DB

USM No. 10737-081

Michael J. Langford

Defendant's Attorney

THE DEFENDANT:

☒ admitted guilty to violation of condition(s) 1 & 2 of the term of supervision.

☐ was found in violation of condition(s) _____ after denial of guilt.

The defendant is adjudicated guilty of these violations:

<u>Violation Number</u>	<u>Nature of Violation</u>	<u>Violation Ended</u>
1.	Failed to Notify Change of Residence	08/24/2011
2.	Failed to Submit to Drug Testing	08/24/2011

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has not violated condition(s) _____ and is discharged as to such violation(s) condition.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

Last Four Digits of Defendant's Soc. Sec. No.: 5563

10/27/2011

Defendant's Year of Birth: 1972

Date of Imposition of Judgment

City and State of Defendant's Residence:
west Valley City, Utah

Dee Benson

Signature of Judge

Dee Benson

U.S. District Judge

Name and Title of Judge

10/31/2011

Date

DEFENDANT: John Patrick Wolfe
CASE NUMBER: DUTX 2:08-cr-000463-001 DB

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of :

- ☐ The court makes the following recommendations to the Bureau of Prisons:
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____
- ☐ as notified by the United States Marshal.
- ☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☐ before 2 p.m. on _____
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____ with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: John Patrick Wolfe

CASE NUMBER: DUTX 2:08-cr-000463-001 DB

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
The defendant shall continue with his supervision of 48 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is be a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: John Patrick Wolfe
CASE NUMBER: DUTX 2:08-cr-000463-001 DB

SPECIAL CONDITIONS OF SUPERVISION

ALL PREVIOUS CONDITIONS ARE REINSTATED along with the following special conditions:

1. The defendant will continue with classes on Wednesday night with the Graduate Group.
2. The defendant will continue drug re-hab as directed by the probation office.
3. The defendant shall participate in a mental health treatment program as directed by the probation office.

The Court orders that the \$100 special assessment fee and \$19,251.04 in restitution ordered on March 26, 2009 for the original offense be reinstated with credit for payments made and that the \$115.00 urinalysis fee for the original offense be waived.

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MATTHEW SIMPSON,

Defendant.

MEMORANDUM DECISION AND
ORDER DENYING DEFENDANT’S
PETITION FOR RESENTENCING
AND ORDER REQUIRING
PROBATION DEPARTMENT TO
AMEND THE DEFENDANT’S
PRESENTENCE REPORT SO IT
CONFORMS TO THE FACTS

Case No. 2:08-CR-733 TS

This matter is before the Court on Defendant’s Petition for Resentencing and Order Requiring Probation Department to Amend the Defendant’s Presentence Report so it Conforms to the Facts. In his Motion, Defendant takes issue with the Bureau of Prison’s (“BOP”) determination concerning sentence credit and his ability to participate in the RDAP drug treatment program.

I. BACKGROUND

On August 2, 2010, Defendant was sentenced to serve 90 months custody in the BOP. At his sentencing, the Court stated its wish that Defendant be enrolled in the RDAP program. Defendant now represents that he has not been given appropriate credit for time he has served and that the BOP has not allowed him to enroll in the RDAP program.

II. DISCUSSION

Credit for time served in official detention prior to imposition of a federal sentence is governed by § 3585(b). That section allows a federal defendant to be given credit toward his federal term of imprisonment for time spent in official detention prior to commencement of his federal sentence only if that time “has not been credited against another sentence.”¹ The letter from the BOP attached to Defendant’s Motion indicates that the BOP refused to give credit from March 7, 2008, through June 12, 2008, because that time was applied to Defendant’s state sentence. As he was given credit for this time on another sentence, § 3585(b) prohibits the BOP from crediting this time against his federal sentence. Should Defendant seek to challenge the BOP’s determination, he must file a petition under 28 U.S.C. § 2241 in the district in which he is incarcerated, after he exhausts his administrative remedies with the BOP.

¹18 U.S.C. § 3585(b).

Defendant also argues that he should be entitled to enroll in the RDAP program.

Defendant alleges that the BOP has refused to allow him to enroll in RDAP. Again, this claim must be brought in a § 2241 Petition after Defendant has exhausted his administrative remedies.²

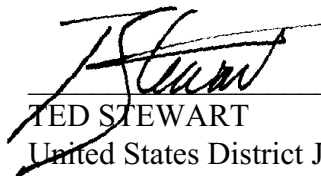
III. CONCLUSION

It is therefore

ORDERED that Defendant's Petition for Resentencing and Order Requiring Probation Department to Amend the Defendant's Presentence Report so it Conforms to the Facts (Docket No. 121) is DENIED.

DATED November 2, 2011.

BY THE COURT:


TED STEWART
United States District Judge

²See *Wilson v. Kastner*, 385 F. App'x 855, 856 n. 2 (10th Cir. 2010) (stating that a petition challenging an RDAP eligibility determination was appropriately brought under § 2241).

Melinda A. Morgan (8392)
VANTUS LAW GROUP, P.C.
3165 East Millrock Drive, Suite 160
Salt Lake City, Utah 84121
Telephone: (801) 833-0506
Facsimile: (801) 931-2500

Attorneys for Plaintiff TFG-New Jersey, L.P

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

TFG-New Jersey, L.P, a Utah limited liability
company,

Plaintiff,

v.

MANTIFF JACKSON NATIONAL
HOSPITALITY LLC, a New Jersey limited
liability company, FALGUN R. DHARIA, an
individual, PARU F. DHARIA, an individual,
MANTIFF MANAGEMENT, INC. a New
Jersey corporation, PRIORITY OUTSOURCE,
INC. dba GCR CAPITAL, a Florida
corporation, JOHN B. GRANT, an individual,
LARRY CARVER, an individual, CARVER
& ASSOCIATES, INC. a Georgia corporation,
and DOES 1 through 10,

Defendants.

**ORDER OF DISMISSAL
OF DEFENDANT MANTIFF JACKSON
NATIONAL HOSPITALITY LLC**

Case No. 2:08-CV-00361-TS

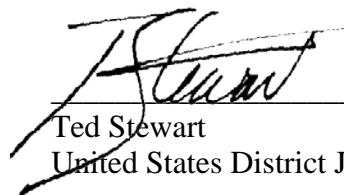
Judge Ted Stewart

Based upon plaintiff's Motion to Dismiss Defendant Mantiff Jackson National
Hospitality LLC with prejudice, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that all claims made in the
above-entitled action by plaintiff against Defendant Mantiff Jackson National Hospitality LLC
be and the same hereby are, dismissed with prejudice and on the merits.

DATED this 2nd day of November, 2011.

BY THE COURT:



Ted Stewart
United States District Judge

Melinda A. Morgan (8392)
VANTUS LAW GROUP, P.C.
3165 East Millrock Drive, Suite 160
Salt Lake City, Utah 84121
Telephone: (801) 833-0506
Facsimile: (801) 931-2500

Attorneys for Plaintiff TFG-New Jersey, L.P

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

TFG-New Jersey, L.P, a Utah limited liability company,

Plaintiff,

v.

MANTIIF JACKSON NATIONAL HOSPITALITY LLC, a New Jersey limited liability company, FALGUN R. DHARIA, an individual, PARU F. DHARIA, an individual, MANTIIF MANAGEMENT, INC. a New Jersey corporation, PRIORITY OUTSOURCE, INC. dba GCR CAPITAL, a Florida corporation, JOHN B. GRANT, an individual, LARRY CARVER, an individual, CARVER & ASSOCIATES, INC. a Georgia corporation, and DOES 1 through 10,

Defendants.

**ORDER GRANTING
PLAINTIFF'S MOTION TO DISMISS
DEFENDANTS PRIORITY OUTSOURCE,
INC., AND JOHN B. GRANT**

Case No. 2:08-CV-00361-TS

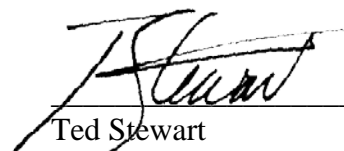
Judge Ted Stewart

Based upon the Plaintiff's Motion to Dismiss Defendants Priority Outsource, Inc., and John B. Grant, and pursuant to Fed. R. Civ. Pro. 41(a)(2), and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, that all claims made in the above-entitled action by Plaintiff TFG-New Jersey, L.P., against Defendants Priority Outsource, Inc., and John B. Grant be and the same hereby are, dismissed without prejudice.

DATED this 2nd day of November, 2011.

BY THE COURT:



Ted Stewart
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

HOLLI LUNDAHL,)	ORDER DENYING HABEAS PETITION
)	
Petitioner,)	Case No. 2:08-CV-839 DB
)	
v.)	District Judge Dee Benson
)	
UNITED STATES ATT'Y GEN. et al.,)	
)	
Respondents.)	

Petitioner, Holli Lundahl, filed a habeas corpus petition, see 28 U.S.C.S. § 2241 (2011), requesting various forms of pretrial relief. The latest facts known by the Court show that Petitioner's Utah-based federal criminal cases have been adjudicated and she was set free. *See United States v. Lundahl*, No. 2:07-CR-272-WFD (D. Utah Jan. 21, 2009); *United States v. Lundahl*, No. 2:06-CR-693-WFD (D. Utah Jan. 21, 2009). On September 28, 2011, the Court ordered Petitioner to within thirty days show cause why her § 2241 petition should not be dismissed as moot. Petitioner has not responded.

IT IS THEREFORE ORDERED that this petition is DENIED as moot.

DATED this 2nd day of November, 2011.

BY THE COURT:



DEE BENSON
United States District Judge

United States District Court
for the District of Utah

**Request and Order for Modifying Conditions of Supervision
With Consent of the Offender**
(Waiver of hearing attached)

Name of Offender: **Brandon Laws**

Docket Number: **2:09-CR-00243-005-TS**

Name of Sentencing Judicial Officer: **Honorable Ted Stewart**
Chief U.S. District Judge

Date of Original Sentence: **December 20, 2010**

Original Offense: **Trafficking in Stolen Artifacts**

Original Sentence: **24 Months Probation**

Type of Supervision: **Probation**

Supervision Began: **December 20, 2010**

PETITIONING THE COURT

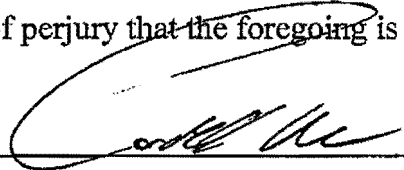
☒ To modify the conditions of supervision as follows:

The defendant shall participate in a substance abuse evaluation and/or treatment under a copayment plan, as directed by U.S. Probation. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.

CAUSE


On September 16, 2011, probation officers met with the defendant at his residence. The defendant submitted a urine sample that tested positive for the presence of methamphetamine. The defendant admitted he had used methamphetamine earlier that day, and he signed a form acknowledging his use of methamphetamine. The defendant admitted he does have a problem with methamphetamine and he would benefit from substance-abuse treatment. The defendant signed a waiver to include substance-abuse treatment to be added as a condition of his supervision, which is attached for the Court's review.

I declare under penalty of perjury that the foregoing is true and correct.


Cordell Wilson
U.S. Probation Officer
Date: November 1, 2011

THE COURT ORDERS:

- ☒ The modification of conditions as noted above
☐ No action
☐ Other



Honorable Ted Stewart
Chief U.S. District Judge

Date: 11-1-11

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
PROBATION AND PRETRIAL SERVICES OFFICE

WAIVER OF RIGHT TO HEARING PRIOR TO
MODIFICATION OF CONDITIONS OF SUPERVISION

I have been advised by U.S. Probation Officer that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No..
The modification would be:

The defendant shall participate in a substance-abuse evaluation and/or treatment under a copayment plan, as directed by U.S. Probation. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.

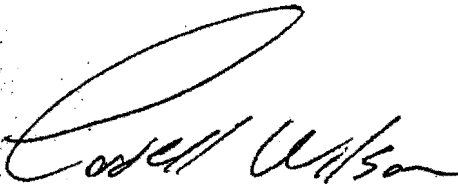
Sign and Print →



BRANDON CLAUS

10-3-11

Date



Cordell Wilson
U.S. Probation Officer

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BRENDA BURTON,

Plaintiff,

vs.

ACCREDITED HOME LENDERS, INC.,
ETITLE INSURANCE AGENCY,
LUNDBERG & ASSOCIATES, JOHN DOES
1-20,

Defendants.

ORDER

Case No. 2:09 CV 157 TC

The court held a hearing on October 11, 2011, on a Motion to Dismiss filed by Defendants Select Portfolio, MERS, and Deutsche Bank. Attorneys for the Defendants were present as were attorneys for Defendants Accredited Home Lenders, Inc., eTitle Insurance Agency and Lundberg & Associates. The plaintiff did not appear for the hearing despite being notified. Based on her failure to appear, the court ordered that an Order to Show Cause¹ be issued as to why Defendants Accredited Home Lenders, Inc., eTitle Insurance Agency and Lundberg & Associates should not be dismissed from the case². The plaintiff was ordered to respond to the Order to Show Cause within ten days of the date of the order or October 24, 2011. The court cautioned the Plaintiff

¹Dkt. 130

²Defendants Select Portfolio, MERS and Deutsche Bank were dismissed from the case by order of the court dated October 14, 2011. (Dkt. 129)

that her failure to respond would result in an Order of Dismissal as to the remaining Defendants.

Plaintiff did not respond to the Order to Show Cause.

IT IS THEREFORE ORDERED that this case is dismissed with prejudice.

DATED this 2nd day of November, 2011.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FATPIPE NETWORKS INDIA LIMITED, an
India corporation,

Plaintiff,

v.

XROADS NETWORKS, INC., a Delaware
corporation,

Defendant.

**ORDER REGARDING DISPUTE OVER
CUSTOMER SUPPORT TICKETS**

Case No. 2:09-cv-186 TC

District Judge Tena Campbell

Magistrate Judge David Nuffer

Plaintiff FatPipe Networks India Limited (FatPipe) obtained an order¹ compelling production of many things including XRoads Networks, Inc. (XRoads) customer support tickets (requests for help), which were sought in response to several Requests for Production.² One of those requests sought “[a]ll information maintained as part of the customer support center (including the ticket information).”³ XRoads has produced customer support requests in paper format⁴ and has recently produced selected customer request responses in electronic form.⁵

The paper-printed customer requests are (at least as presented to the magistrate judge) unintelligible. The print out is a run-on stream of data. Similarly, the electronic responses are unusable. They were produced as electronic files filtered on XRoads’ selected criteria without

¹ Order Granting in Part FatPipe’s Motions to Compel, docket no. 382, filed September 26, 2011.

² *Id.* at 5.

³ Request for Production No. 8 reproduced at 5 in Fatpipe’s Memorandum In Support Of Motion to Compel Re: Plaintiff’s Third Requests for Production of Documents and Request for Inspection (Supporting Memorandum 352), docket no. 352, filed June 8, 2011.

⁴ Exhibit to FatPipe’s Response to XRoads’ Status Report on Conferral (Dkt No. 386)(FatPipe Response 395), docket no. 395, filed under seal October 14, 2011; Exhibit 1 (to Fatpipe’s Supplemental Reply to Xroads’ Response to Request for Extension (Dkt No. 399) (FatPipe’s Reply 402), docket no. 402, filed under seal November 1, 2011), docket no. 406, filed under seal November 1, 2011.

⁵ CD attached to XRoads’ Supplemental Response to FatPipe’s Third Requests for Production of Documents, attached as Exhibit 2 to Fatpipe’s Reply 402.

field identifiers; indication of deleted fields; or even a file extension to determine the file type. XRoads' Supplemental Responses to Fatpipe's Third Requests for Production of Documents⁶ do not explain this missing information for the electronic files.

The parties failed to confer and find a suitable solution for the production of these files as the magistrate judge had directed on September 29, 2011.⁷ The parties have filed many papers on this dispute,⁸ and FatPipe has sought to continue the hearings set November 14-15, 2011 because of this dispute.⁹

The two issues before the magistrate judge are (a) production of the customer support tickets and (b) continuance of the November 14-15 hearing.

Continuance of the Hearing

FatPipe originally argued several reasons the customer tickets were sought:

- "This information could be very important in dating versions and in determining the functionality of the XOS Platform."¹⁰
- "This request should require, among other things, that all code, all emails, all support tickets, communications with customers, directions/ requests to programmers which relate to security or encryption be produced."¹¹
- "The ticket responses/files should contain information on functionality, and the date thereof, and the versions and the dates thereof – all relevant to the infringement claims in the lawsuit."¹²

⁶ Exhibit 2 to FatPipe Reply 402 at 5 and 9.

⁷ Minute Entry, docket no. 385.

⁸ Status Report on Conferral, docket no. 386, filed October 6, 2011; FatPipe Response 395; [XRoads'] Corrected Reply Regarding Status Report on Conferral, docket no. 397, filed October 21, 2011.

⁹ Email from Val Antzak dated October 28, 2011, lodged under seal as docket no. 405; XRoads' Response to Fatpipe's Request for Extension, docket no. 399, filed October 31, 2011; FatPipe Reply 402.

¹⁰ Supporting Memorandum 352 at 6 discussing Request for Production No. 8.

¹¹ Supporting Memorandum 352 at 13 discussing Request for Production No. 32.

¹² Supporting Memorandum 352 at 14 discussing Request for Production No. 36.

None of these arguments affect in a substantial way the issues to be dealt with at the November 14-15 hearing. Therefore the hearing will proceed as planned.

Production of the Tickets

However, the customer ticket database is likely to contain information relevant to the claims and defenses in this case. The parties have proven their inability to meet and confer to find a solution and XRoads' has not delivered data in a useful form. Therefore, XRoads must produce the entire customer ticket database in native form.

ORDER

IT IS HEREBY ORDERED:

Within fourteen days XRoads shall deliver a native format copy of the customer ticket database to FatPipe subject to Confidential - Attorney's Eyes Only designation under the Stipulated Protective Order.¹³ In addition, XRoads shall deliver the name and version of the software used to maintain this database, and the contact information of the manufacturer.

Until further order of the court the following additional restrictions shall apply to the produced copy of the customer ticket database:

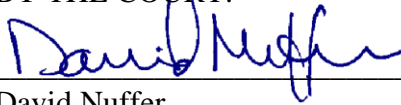
- a. no portion of the database shall be transmitted by electronic means or installed on a computer connected to the internet.
- b. access shall be restricted to two persons in the category described in paragraph 2.7.1 of the Stipulated Protective Order who shall be identified by name to XRoads within seven days of this order and to a single outside litigation expert to enable the expert to

¹³ Docket no. 32, filed July 23, 2009.

- evaluate the technical issues in this case *after* that expert complies with paragraph 2.13 of the Stipulated Protective Order specifically with regard to this information.
- c. FatPipe's only permitted use of the information contained in the database is to provide it to an expert to enable the expert to evaluate the technical issues in this case.

Dated November 2, 2011.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

DAVID B. BARLOW, United States Attorney (#13117)
CY H. CASTLE, Assistant United States Attorney (#4808)
Attorneys for the United States of America
185 South State Street, Suite 300
Salt Lake City, Utah 84111
Telephone: (801) 524-5682
Fax (801) 325-3310

FILED
U.S. DISTRICT COURT
2011 NOV -1 P 3:40
DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

\$190,160.00 IN UNITED STATES CURRENCY,

Defendant.

ORDER APPROVING STIPULATION
TO ALLOW PLAINTIFF ADDITIONAL
TIME TO RESPOND TO EDWARD
SMITH'S NOTICE OF
REPRESENTATION AND MOTION TO
JOIN


Case No. 2:09-cv-662-DB

Judge Dee Benson

Based upon the motion of plaintiff, the stipulation of Edward Smith, and good cause appearing, it is ordered that plaintiff has until on or before November 4, 2011 to file a response to Edward Smith's Notice of Representation and Motion to Join.

Dated this 1 day of November, 2011.

BY THE COURT:



Judge Dee Benson
U.S. District Court

Lauren I. Scholnick (Bar No. 7776)
Erik Strindberg (Bar No. 4154)
Kathryn Harstad (Bar No. 11012)
STRINDBERG & SCHOLNICK, LLC
785 North 400 West
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Attorneys for Plaintiff and Counterclaim Defendants

FILED
U.S. DISTRICT COURT

2011 NOV -2 A 10:55

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT,
DISTRICT OF UTAH, CENTRAL DIVISION**

**PARADYM INTERNATIONAL INC.,
aka PARADYM, LLC, a California
Corporation,**

Plaintiff,

vs.

**NCB INTERNATIONAL, LLC, (f/k/a
NEW CASH BIZ), BARRY STEED, an
individual, and LESLIE D. MOWER, an
individual,**

Defendants,

NCB INTERNATIONAL,

Counterclaim Plaintiff,

vs.

**PARADYM INTERNATIONAL INC.,
aka PARADYM, LLC,**

Counterclaim Defendants.

**THIRD AMENDED SCHEDULING
ORDER**

Case No: 2:09-cv-901

Judge Bruce S. Jenkins

Pursuant to Federal Rule of Civil Procedure 16(b), the following matters are
scheduled:

1. The dates scheduled in the Second Amended Scheduling Order (Doc. #23) are hereby stricken.

2. All discovery (both fact and expert) shall be completed no later than December 23, 2011.

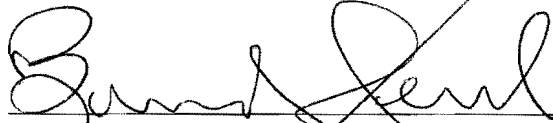
3. All dispositive or potentially dispositive motions and other post-discovery motions shall be filed no later than February 3, 2012.

4. The Final Pretrial Conference scheduled for February 17, 2012 at 1:30 p.m. is hereby stricken. The Final Pretrial Conference will now be held on April 23, 2012 at 1:30 p.m.

5. Stipulated Final Pretrial Order will be due to the Court no later than April 19, 2012.

DATED this 7 day of ^{October}~~October~~, 2011.

BY THE COURT



Honorable Judge Bruce S. Jenkins
United States District Court

Approved as to form:

BAILEY & JENNINGS, LC

/s/ William T. Jennings

William T. Jennings

Attorneys for NCB International,

Barry Steed, and Leslie D. Mower

Eric C. Olson (#4108)
Adam D. Stevens (#10986)
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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

NOV 01 2011

D. MARK JONES, CLERK
BY DEPUTY CLERK

Attorneys for Defendant FRUITOLOGY, INC.

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

MONAVIE, LLC, a Utah limited liability
company,

Plaintiff,

v.

FRUITOLOGY, INC., a Nevada corporation,

Defendant.

ORDER OF DISMISSAL WITH PREJUDICE

Civil Action No. 2:09-cv-01052 SA

Magistrate Judge Samuel Alba

This matter came before the Court pursuant to the joint motion and stipulation for dismissal with prejudice filed by Plaintiff MONAVIE, LLC and Defendant FRUITOLOGY, INC. Based on the parties' joint motion and stipulation, and good cause appearing,

IT IS HEREBY ORDERED that all of the claims of the parties asserted in the above captioned action be, and hereby are, dismissed with prejudice. The parties shall bear their own costs and attorney fees incurred in connection with this action.

DATED this 5th day of November, 2011.

BY THE COURT


Magistrate Judge Samuel Alba

APPROVED AS TO FORM:

/s/ Brian C. Johnson
R. Roman Groesbeck
Graden P. Jackson
Brian C. Johnson
STRONG & HANNI
Attorneys for Plaintiff MONAVIE, LLC
(Signed and Filed with Attorney's Permission)

/s/ Eric C. Olson
Eric C. Olson
Adam D. Stevens
KIRTON & McCONKIE
Attorneys for Defendant FRUITOLOGY, INC.

/s/ Mark W. Romney
Mark W. Romney
SHANNON GRACEY RATLIFF & MILLER LLP
Attorney for Defendant FRUITOLOGY, INC.
(Signed and Filed with Attorney's Permission)

HOLLINGSWORTH LAW OFFICE, LLC

/s/ April L. Hollingsworth

April L. Hollingsworth
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October 2011, I caused to be served a true and correct copy of the foregoing **PLAINTIFF'S MOTION FOR RELIEF FROM ORDER** through the court's ecf filing system, to the following:

Kathleen M. Liuzzi
DUNN & DUNN, P.C.
505 E. 200 S., 2nd Floor
Salt Lake City, UT 84102

Linette Hutton
WINDER & COUNSEL, P.C.
175 W. 200 S., Suite 4000
Salt Lake City, UT 84110-2668

April L. Hollingsworth

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 2011, the foregoing **ORDER OF DISMISSAL WITH PREJUDICE** was served on the following by the method indicated:

R. Roman Groesbeck
Graden P. Jackson
Brian C. Johnson
STRONG & HANNI
3 Triad Ctr Ste 500
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rgroesbeck@strongandhanni.com
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Attorneys for Plaintiff MONAVIE, LLC

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☒ Email/Efiler

/s/ Wendy Maynard

PREPARED AND SUBMITTED BY:
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FILED
U.S. DISTRICT COURT

2011 NOV -2 A 10:05

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Attorneys for Defendants/Counter-Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

TFG-ILLINOIS, L.P., a Utah limited
partnership,

Plaintiff/Counter-Defendant,

vs.

UNITED MAINTENANCE COMPANY,
INC., an Illinois corporation, UNITED
SECURITY SERVICES, INC., a Nevada
corporation, UNITED SUPPLY
SERVICES, INC., a Nevada corporation,
UNITED TEMPS, INC., a Nevada
corporation, UNITED NATIONAL
MAINTENANCE, INC., a Nevada
corporation, RICHARD A. SIMON, a
citizen of Illinois, and CAROL D. STEIN-
STERLING, a citizen of Illinois,

Defendants/Counter-Plaintiffs.

**~~PROPOSED~~ ORDER GRANTING
DEFENDANTS' *EX PARTE* MOTION TO
SEAL DECLARATION EXHIBITS
PURSUANT TO PROTECTIVE ORDER**

Case No. 2:09-cv-1122

Judge: Honorable Ted Stewart

Magistrate Judge Alba

This matter is before the Court on the Defendants' *ex parte* motion to seal Exhibits B [Dkt. #104-2], F [Dkt. #104-6], H [Dkt. #104-8], and I [Dkt. #104-9] to the Declaration of Brandon J. Mark in Support of Defendants' Reply Memorandum in Support of Defendants' Motion to Dismiss for Lack of Subject-Matter Jurisdiction Pursuant to Rule 12(b)(1) [Dkt. #104]

pursuant to section 7 of the Protective Order [Dkt. #30] on the basis that such exhibits contain documents designated as confidential pursuant to the Protective Order. Based on the motion, and good cause appearing therefor, the Court HEREBY ORDERS that the motion is GRANTED. The court clerk is directed to seal Exhibits B, F, H, and I to the Declaration of Brandon J. Mark in Support of Defendants' Reply Memorandum in Support of Defendants' Motion to Dismiss for Lack of Subject-Matter Jurisdiction Pursuant to Rule 12(b)(1) [Dkt. #104].

DATED this ^{November} ~~1st~~ day of ~~July~~ 2011.

BY THE COURT:



Ted Stewart
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SALVADOR JOSEPH GONZALES,

Defendant.

**MEMORANDUM DECISION
AND ORDER**

Case No. 2:10-cr-00967 CW

Judge Clark Waddoups

Salvador Joseph Gonzales (“Gonzales”) was indicted on October 20, 2010 under 26 U.S.C. § 5861(d), for possession of an unregistered short-barreled rifle. Defendant moved to have the indictment dismissed on the grounds that section 5861(d), as it pertains to .22 caliber short-barreled rifles, is unconstitutional under the Second Amendment. The court holds that Defendant’s .22 caliber short-barreled rifle is not a weapon protected by the Second Amendment, for the reasons set forth below. Furthermore, even if the Second Amendment protected the firearm, the legislation survives review under intermediate scrutiny.

BACKGROUND

On September 17, 2010, police arrived at the home Gonzales shared with his wife, in response to a 911 call reporting a domestic altercation. They arrested Gonzales and seized an

unloaded, sawed-off .22 caliber rifle from inside the home. The gun's barrel was under twelve inches in length, and the weapon had an overall length of approximately 20 inches. The rifle was not registered to Gonzales in the National Firearms Registration and Transfer Record. The government indicates that a few weeks after his arrest, during a post-Miranda interview, Gonzales admitted to owning the short-barreled rifle for some time, stating that he cut the barrel short and modified the stock himself years earlier.

26 U.S.C. § 5861(d) makes it unlawful for an individual “to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record.” With respect to this provision, “firearm” is defined as a short-barreled shotgun, a machine gun, a silencer, a destructive device, or any “rifle having a barrel or barrels of less than 16 inches in length [or] a weapon made from a rifle if such weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.” 26 U.S.C. § 5845(a). Before making a short-barreled rifle, a person is required to obtain the permission of the Secretary of the Treasury to make and register the firearm, 26 U.S.C. § 5822, and must pay a \$200 tax, 26 U.S.C. § 5821(a). Each transfer of a short-barreled rifle is also taxed at \$200. 26 U.S.C. § 5811. Violation of any of these provisions may lead to penalties including seizure of the unregistered firearms, 26 U.S.C. § 5872(a), as well as fines of up to \$10,000 and up to ten years imprisonment, 26 U.S.C. § 5871.

Gonzales is challenging his indictment, arguing that the requirement that short-barreled rifles be registered infringes upon his Second Amendment rights. Specifically, Gonzales argues that there is no functional difference between a .22 caliber short-barreled rifle and a .22 caliber

handgun, and that handguns have been recognized as protected by the Second Amendment by the Supreme Court in *District of Columbia v. Heller*, 545 U.S. 570 (2008). The court finds that, regardless of functional similarities, there are important cultural differences between handguns and short-barreled rifles which preclude Second Amendment protection and justify the registration requirement. Furthermore, as 26 U.S.C. § 5861 only mandates registration for short-barreled rifles, and does not fully prohibit their possession and use, it would survive intermediate scrutiny if the Second Amendment were to apply.

ANALYSIS

I. LEGAL STANDARD

“[P]retrial dismissal of an indictment is a rare exception, appropriate only in rare circumstances, where the Court is able to make a determination that, *as a matter of law*, the government is incapable of proving its case beyond a reasonable doubt.” *United States v. Engstrum*, 609 F. Supp. 2d 1227, 1229 (D. Utah 2009) (emphasis in original) (internal citations, quotations, and alterations omitted). All allegations made in the indictment must be taken as true. *United States v. Todd*, 446 F.3d 1062, 1067 (10th Cir. 2006).

II. THE SAWED-OFF RIFLE IS NOT PROTECTED BY THE SECOND AMENDMENT

The Tenth Circuit has established a two-pronged approach when considering statutory challenges under the Second Amendment. “A reviewing court first asks whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment’s guarantee. If it does not, the court’s inquiry is complete. If it does, the court must evaluate the law under some form of means-end scrutiny.” *United States v. Reese*, 627 F.3d 792, 800–01 (10th Cir.

2010) (internal quotations, citations, and alterations omitted). Therefore, the court must first determine whether possession of a short-barreled rifle is conduct protected by the Second Amendment.

The Second Amendment provides, “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II. In *Heller*, the Supreme Court clarified that this constitutional provision guarantees “the individual right to possess and carry weapons in case of confrontation,” even to those individuals who do not participate in a state-recognized militia. 554 U.S. at 592. However, “[l]ike most rights, the right secured by the Second Amendment is not unlimited [and] is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626.

Decades before *Heller*, the Supreme Court determined, in *United States v. Miller*, 307 U.S. 174 (1939), that the federal government could require registration and taxation of short-barreled shotguns without violating the Second Amendment. In *Heller*, the Court explained *Miller* establishes “that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.” *Heller*, 554 U.S. at 625; *see also id.* at 627 (stating there is a long-standing “historical tradition of prohibiting the carrying of dangerous and unusual weapons”). In addition to short-barreled shotguns, circuit courts have held that other weapons, such as pipe bombs, *United States v. Tagg*, 572 F.3d 1320 (11th Cir. 2009), and machine guns, *Hamblen v. United States*, 591 F.3d 471 (6th

Cir. 2009), are not typically possessed by law-abiding citizens for lawful purposes, and thus fall outside the scope of the Second Amendment.

Heller also explained that the Second Amendment does not invalidate “longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.” *Heller*, 554 U.S. at 626–27. The concept that longstanding regulations are presumptively valid has been recognized in other cases by the Supreme Court. *See Nev. Comm’n on Ethics v. Carrigan*, 131 S. Ct. 2343, 2347–48 (2011) (“A universal and long-established tradition of prohibiting certain conduct creates a strong presumption that the prohibition is constitutional: Principles of liberty fundamental enough to have been embodied within constitutional guarantees are not readily erased from the Nation’s consciousness. Laws punishing libel and obscenity are not thought to violate ‘the freedom of speech’ to which the First Amendment refers because such laws existed in 1791 and have been in place ever since) (internal quotations, citations, and alterations omitted); *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3047 (2010). Most recently, the District of Columbia Court of Appeals has stated that, because “a regulation that is longstanding . . . necessarily . . . has long been accepted by the public, [and] is not likely to burden a constitutional right,” a person challenging a longstanding gun regulation must rebut the presumption of lawfulness “by showing the regulation does have more than a de minimis effect upon his [Second Amendment] right.” *Heller v. District of Columbia* (“*Heller II*”), No. 10-7036, 2011 WL 4551558, at *6 (D. C. Cir. Oct. 4, 2011). The court finds this reasoning persuasive.

26 U.S.C. § 5861(d) embodies a long-standing requirement that short-barreled rifles be federally registered and taxed. Short-barreled rifles, as well as short-barreled shotguns and machine guns, have been federally regulated and taxed since 1934, when Congress enacted the original National Firearms Act (“the 1934 Act”).¹ The inclusion of short-barreled rifles under the definition of “firearms” that are taxed and registered, as well as the related legislative history, manifests a determination by Congress that such weapons were not typically possessed by law-abiding citizens. This is important, as “[w]henever called upon to judge the constitutionality of an Act of Congress—the gravest and most delicate duty that [courts are] called upon to perform—[courts should accord] great weight to the decisions of Congress.” *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981).²

¹ The law imposed a tax of \$200 upon each firearm transfer, National Firearms Act, § 3(a), Pub. L. No. 73-474, 48 Stat. 1236–40 (1934), and required all current firearm owners to register their firearms within 60 days of the effective date of the act. *Id.* at § 5(a). “Firearm” was defined as any “shotgun or rifle having a barrel of less than eighteen inches in length, or any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person, or a machine gun, [or] a muffler or silencer.” *Id.* at § 1(a).

The relevant bill was originally numbered H.R. 9066, but was amended and renumbered H.R. 9741 before being enacted into law.

² This is especially so when Congress specifically considers the constitutionality of the legislation before passing it. *Rokster*, 453 U.S. at 64. With respect to the National Firearms Act, Congress did engage in such a discussion, not only on the constitutionality of using the taxing power to curtail criminal behavior, but also in the context of the Second Amendment. *See National Firearms Act: Hearings on H.R. 9066 Before the H. Comm. on Ways and Means*, 73d Cong. 53 (1934) (hereinafter “Nat’l Firearms Act Hearings”) (conversation between Del. Clement C. Dickinson, Member, H. Comm. on Ways & Means, Del. John W. McCormack, Member, H. Comm. on Ways & Means, and Karl T. Frederick, President, National Rifle Association of America) (“Mr. Dickinson. I will ask you whether or not this bill interferes in any way with the right of a person to keep and bear arms or his right to be secure in his person against unreasonable search; in other words, do you believe this bill is unconstitutional or that it violates any constitutional provision? Mr. Frederick. I have not given it any study . . . but I do

A. The 1934 Act

During the Great Depression, the nation faced the difficulty of controlling violence by gangsters. *See* 78 Cong. Rec. 11,400 (1934) (statement of Rep. Robert L. Doughton) (“For some time this country has been at the mercy of the gangsters, racketeers, and professional criminals.”); Nat’l Firearms Act Hearings, 73d Cong. 4 (1934) (Statement of Homer. S. Cummings, Att’y Gen. of the United States) (“[T]here are more people in the underworld today armed with deadly weapons, in fact, twice as many, as there are in the Army and the Navy of the United States combined”); *Lomont v. O’Neill*, 285 F.3d 9 (D.C. Cir. 2002) (“The emergence of organized crime as a major national problem led to the enactment of the National Firearms Act of 1934.”). Congress responded with a collection of legislation, including the National Firearms Act, targeting “the roaming groups of predatory criminals who know . . . they are safer if they pass quickly across a state line.” Nat’l Firearms Act Hearings, 73d Cong. 4 (1934) (Statement of Homer. S. Cummings, Att’y Gen. of the United States). In enacting the National Firearms Act, Congress “sought to regulate the sale, transfer, and license of machine guns, sawed-off shotguns, sawed-off rifles, and other firearms, other than pistols and revolvers, which may be concealed on the persons, and silencers.” H.R. Rep. No. 75-2457, at 1 (1938).³

think it is a subject which deserves serious thought. Mr. Dickinson. My mind is running along the lines that it is constitutional. Mr. McCormack. You have been living with this legislation or following this type of legislation for quite a number of years. Mr. Frederick. Yes; I have. Mr. McCormack. The fact that you have not considered the constitutional aspect would be pretty powerful evidence, so far as I am concerned, that you did not think that question was involved.”).

³ While the court is cognizant of the need to be wary of ascribing a single purpose to any action undertaken by the legislature, the discussion surrounding the 1934 Act evinced a widely shared concern for preventing mobster violence. *See* 78 Cong. Rec. 11,400 (1934) (statement of Rep. William P. Connery, Jr.) (“As I understand, the primary purpose of the bill is to stop

The 1934 Act was originally drafted to include all pistols and revolvers, as well as short-barreled shotguns, short-barreled rifles, and machine guns. H. R. 9066, 73d Cong. (1934) (“[F]or the purposes of this act the term ‘firearm’ means a pistol, revolver, shotgun having a barrel less than sixteen inches in length, or any other firearm capable of being concealed on the person, a muffler or silencer therefor, or a machine gun.”). In considering the Bill, the House Ways and Means Committee heard testimony from various groups, including gun manufacturers, the National Rifle Association (“NRA”), the American Legion, and the American Game Association. In addition, Congressional members received letters and telegrams from groups around the country, expressing various views about the proposed legislation. *See* 78 Cong. Rec. 11,398 (1934). Many of these comments, as well as much of the testimony, centered on legitimate uses for pistols and revolvers, and urged Congress not to require taxation and registration of such guns. Before passing the bill into law, Congress amended its language to include only short-

gangsters from getting hold of machine guns”); Nat’l Firearms Act Hearings, 73d Cong. 92 (1934) (Statement of Joseph B. Keenan, Assistant Att’y Gen.) (“Our position is this: The firearm today is causing a great deal of destruction and death in our land. . . . We do not believe this bill will disarm the hardened gangster, nor do we believe that it will prevent him from obtaining firearms. We do believe that it will permit effective and adequate prosecution, and take that man out of circulation when he does not comply.”); *Id.* at 129 (Statement of J. Weston Allen, Chairman of the National Crime Comm’n) (observing “if we can have the right to register guns, so that a man who has unregistered guns is thereby guilty of a felony, you are going to put, in my opinion, more gunmen and gangsters in jail than by anything [else] that this committee can do”). *See also* *McKee & Co. v. First Nat. Bank of San Diego*, 265 F. Supp. 1 (C.D. Cal. 1967) (“When Congress passed the National Firearms Act [in June of 1934], imposing a tax on dealers in firearms and on the traffic of firearms, the purpose and intent of Congress was without question directed to the Dillingers, Ma Barkers, and gangsters who were plaguing the country with crimes of violence.”) *United States v. Adams*, 11 F. Supp. 216, 218 (C.D. Fla. 1935) (“The National Firearms Act [arose from] a motive to prevent racketeers, bank robbers, and desperadoes from obtaining sawed-off shotguns and machine guns to run wild in crime and to enable the government to trace ownership.”).

barreled shotguns, short-barreled rifles, machine guns, and silencers in the definition of “firearm.”

This legislative history strongly suggests that handguns, as the Supreme Court in *Heller* observed, are “the quintessential self-defense weapon” and fall under Second Amendment protection. *Heller*, 554 U.S. at 629. In contrast, however, there was no discussion in the legislative history urging the exclusion of short-barreled rifles, supporting the conclusion that citizen-groups and members of Congress did not consider such weapons to have been typically used for lawful purposes. One representative specifically addressed the importance of rifles in deer hunting, but also expressed a belief that rifles with barrels shorter than 18 inches should be regulated. Nat’l Firearms Act Hearings, 73d Cong.13 (1934) (comment of Rep. Harold Knutsun, Member, H. Comm. on Ways & Means) (asking that the bill be amended to specifically ban short barreled rifles, stating he “would not like to pass any legislation to forbid or make it impossible for our people to keep arms that would permit them to hunt deer,” but adding a barrel limit of 18 inches “would make this provision stronger than 16 inches”).⁴

The legislative history not only supports that Congress concluded that short-barreled rifles were dangerous weapons not commonly used by law abiding citizens, but also indicates

⁴ The only other discussion of barrel length in the 1934 Act’s legislative history similarly supports the conclusion that guns short enough to fall under the Act were not lawfully used. Nat’l Firearms Act Hearings, 73d Cong. 81 (1934) (statement of Seth Gordon, President, Am. Game Ass’n) (“If you will permit one observation, there is some question about how far you ought to go when you say sawed-off shotgun. When you speak about a gun shorter than 18 inches or 20 or 22 inches, that is one thing. If you include a gun which happens to have the end of the barrel blown off because someone got snow or mud in it, and the barrels are cut off and they continue to use it, as they do in the country, it is another thing. You have to be careful when you say sawed-off shotgun so you do not include a gun which is still useful.”).

that Congress considered the need to regulate .22 caliber rifles. At the behest of the NRA, the House Ways and Means committee considered exempting some .22 caliber pistols from the act, which it recognized as primarily being used for target practice. Such an exemption for .22 caliber short-barreled rifles was not proposed. Indeed, one Representative questioned whether a low-caliber rifle exemption would be appropriate, stating “[t]here are some high-powered .22 caliber rifles, not of a type for target practice.” Nat’l Firearms Act Hearings, 73d Cong. 89 (1934) (comment of Rep. Roy O. Woodruff, Member, H. Comm. on Ways & Means).

B. The 1936 Amendment

As time passed, Congress continued to assess the advisability of regulating .22 caliber short-barreled rifles. In 1936, it acted to amend the National Firearms Act. The amended language stated the definition of “firearm” did “not include any rifle which is within the foregoing provisions solely by reason of the length of its barrel if the caliber of such rifle is .22 or smaller *and* if its barrel is sixteen inches or more in length.” Act of April 10, 1936, ch. 169, 49 Stat. 1192 (“1936 Amendment”) (emphasis added). Therefore, although most rifles with barrels of less than eighteen inches were still regulated under the amended language of the act, an exemption was created for rifles of .22 caliber and less, so long as those rifles had barrels at least sixteen inches in length. All rifles with barrels shorter than sixteen inches continued to be regulated, regardless of caliber.

According to the legislative reports, the change was made because a few guns commonly used for lawful purposes had fallen under the sweep of the act.

[U]nder a strict technical interpretation of [the original definition of ‘firearm’], a discrimination and hardship, which was never intended, has been inflicted upon

two or three manufacturers of .22 and less caliber hunting rifles . . . which are in fact less susceptible of being concealed on the person than other types of rifles, of the same caliber, not coming within the technical interpretation.

H.R. 2000, 74th Cong. (1936), incorporated fully in S. 1682, 74th Cong. (1936). Additionally, the Attorney General observed in support of the proposed amendment, “the Department [of Justice] has no desire to place unfair restrictions on the manufacturers of the ordinary small-caliber hunting or target rifles which are not employed by the criminal element.” *Id.*

The 1936 Amendment confirms Congress specifically considered small-caliber rifles when mandating registration and taxation for weapons commonly used by criminals. Thus, the legislature has determined that rifles with barrels shorter than sixteen inches, including .22 caliber short-barreled rifles such as the one in this case, are not typically possessed for lawful purposes.

C. The Current Act

The National Firearms Act was amended several more times, before settling in its current form in 1968. National Firearms Act, Pub. L. No. 90-618, 1968 U.S.C.C.A.N. 4410 (codified at 26 U.S.C. §§ 5801–5872). The current language differs from the 1936 Amendment in that it removes the distinction between .22 caliber rifles and those of a greater caliber, and exempts all rifles with a barrel length longer than sixteen inches from the Act. 26 U.S.C. § 5845. In enacting this language, Congress specifically found that “short-barreled rifles are primarily weapons of war and have no appropriate sporting use or use for personal protection.” S. Rep. No. 90-1501, at 28 (1968).

For nearly eighty years, the federal legislature has chosen to tax short-barreled rifles and require their registration, having determined that such weapons are not typically used for lawful purposes.⁵ See *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517 (1992) (“It is of course clear from the face of the Act that the [National Firearms Act’s] object was to regulate certain weapons likely to be used for criminal purposes, just as the regulation of short-barreled rifles, for example, addresses a concealable weapon likely to be so used.”). This blanket prohibition was not made without careful consideration of the extent to which possession of .22 caliber short-barreled rifles should be regulated. Therefore, the court determines that Congress’ longstanding regulation of these guns raises a presumption that short-barreled rifles, including .22 caliber rifles, are not constitutionally protected.

If Gonzales had made a showing that, despite Congress’ longstanding determination, .22 caliber short-barreled rifles are commonly used by law-abiding citizens, the presumption might be rebutted and the Second Amendment may apply. Defendant, however, did not present any evidence on this point.⁶ Instead, he focused on the functional similarities between .22 caliber handguns, which are fully protected under the core Second Amendment right, and .22 caliber short-barreled rifles. Although such guns may sometimes be almost identical in length and functionality, these technical similarities are not legally relevant so long as handguns remain

⁵ The fact that Congress chose to tax such weapons, rather than prohibiting them completely, may suggest that there are some legitimate uses for short-barreled rifles. Even if this is true, however, it does not establish that short-barreled rifles are *commonly* used for lawful purposes.

⁶ Typically the government bears the burden of proving the constitutionality of its statute. Given the presumptive validity of long-standing regulations, however, in this case the burden appropriately shifts to the challenger. See *Heller II*, 2011 WL 4551558, at *6.

commonly used for lawful purposes while short-barreled rifles are not typically possessed by law-abiding citizens. *See also United States v. Eggebrecht*, 486 F.2d 136, 137 (8th Cir. 1973) (“[T]he assertion that a sawed-off rifle ‘become[s] just another handgun’ not outlawed by the act [is not persuasive.]”).

III. EVEN UNDER THE SECOND AMENDMENT, SECTION 5861(d) WOULD SURVIVE INTERMEDIATE SCRUTINY

As explained above, the court finds that Gonzales’ .22 caliber short-barreled rifle is not a weapon typically used by law-abiding citizens for lawful purposes, and thus falls outside the protections of the Second Amendment. Additionally, however, the court concludes that 26 U.S.C. § 5861(d) would be constitutional even if the firearm were protected by the Second Amendment.

When the Second Amendment is implicated, the second prong of the *Reese* test requires the court to review the challenged statute under some form of means-end scrutiny. *United States v. Reese*, 627 F.3d 792, 800–01 (10th Cir. 2010). In *Heller*, the Supreme Court did not specify what heightened level of scrutiny should be applied to laws infringing upon Second Amendment rights, beyond a comment that rational basis review is not appropriate. *Heller*, 554 U.S. at 628–29; *Reese*, 627 F.3d at 801. The Tenth Circuit, however, has directed that “‘the Second Amendment can trigger more than one particular standard of scrutiny,’ depending, at least in part, upon ‘the type of law challenged and the type of Second Amendment restriction at issue.’” *Reese*, 627 F.3d at 801 (quoting *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010)) (internal alterations omitted).

Thus, when a law infringes upon Second Amendment rights, the court should apply either intermediate or strict scrutiny, depending upon how restrictive the law is. *Reese*, 627 F.3d at 802. Restrictiveness is gauged both by the class of persons affected by the law, as well as the class of firearms. *Id.* In other words, a regulation prohibiting the general public from acquiring any guns may be subject to strict scrutiny, while a statute prohibiting only some people, such as those convicted of domestic violence, from acquiring guns, or banning only possession of some guns, such as those with obliterated serial numbers, may be subject to intermediate scrutiny. *Id.*

26 U.S.C. § 5861(d) does apply to the public at large. At the same time, however, it applies only to a narrow class of firearms not commonly used lawfully, such as machine guns, sawed-off shotguns, and sawed-off rifles. The regulation does not prohibit the possession of handguns, “the quintessential self-defense weapon[s]” or “prevent a person from keeping a suitable and commonly used weapon for protection in the home or for hunting, whether a handgun or non-automatic long gun.” *Heller II*, 2011 WL 4551558, at *14 (quoting *Heller*, 554 U.S. at 629).

Indeed, Section 5861 does not completely ban the possession of any type of gun. Instead, it provides that an individual acquiring possession of a “firearm” must first register the gun and pay a \$200 tax. Thus, even were the court to conclude that the Second Amendment is implicated, the statute may be “characterized as a regulation of the manner in which persons may lawfully exercise their Second Amendment rights,” much like a time, place, or manner restriction on First Amendment rights. *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010). Such restrictions, which do not “effectively disarm individuals or substantially affect their ability to

defend themselves” and “impose only modest burdens” on constitutional rights, are generally subject only to intermediate scrutiny. *Heller II*, 2011 WL 4551558, at *14. Because the National Firearms Act only regulates, and does not ban, the firearms at issue, it does not substantially burden constitutional rights. Therefore, intermediate scrutiny, not strict scrutiny, is the appropriate standard of review.⁷

In order for a statute to “pass constitutional muster under intermediate scrutiny, the government has the burden of demonstrating that its objective is an important one and that its objective is advanced by means substantially related to that objective.” *Reese*, 627 F.3d at 802. In other words, the government must show a “fit” between its prohibition and its important interests. *Heller II*, 2011 WL 4551558, at *15.

In this case, the government has advanced several general interests, including public safety, crime prevention, and the need to keep firearms favored by criminals off the streets. These are all important objectives. *See Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 434 (2002) (“[W]e find that reducing crime is a substantial government interest”); *United States v.*

⁷ As Judge Stewart of the District of Utah recognized in *United States v. Engstrum*, 609 F. Supp. 2d 1227, 1231 (D. Utah 2009), the Second Amendment protects a fundamental right of the American people. *See also McDonald*, 130 S. Ct. at 3042 (observing the right to keep and bear arms has long been considered “among those fundamental rights necessary to our system of ordered liberty”). Judge Stewart applied strict scrutiny to the challenge under the Second Amendment before him in that case. Judge Stewart, however, did not have the benefit of the further development of the law in *Reese*. In *Reese*, the Tenth Circuit explained that, like the fundamental right to free speech, the right to bear arms is not universally protected by strict scrutiny. *See Reese*, 627 F.3d at 801. *See also Heller II*, 2011 WL 4551558, at *8 (“The [Supreme] Court has not said, however, and it does not logically follow, that strict scrutiny is called for whenever a fundamental right is at stake.”); *Marzzarella*, 614 F.3d at 96 (“Strict scrutiny does not apply automatically any time an enumerated right is involved.”).

Griffin, 7 F.3d 1512, 1517 (10th Cir. 1993) (“Important government interests include effective crime detection and prevention, and minimizing the risk of harm to officers and the public.”); *United States v. Engstrum*, 609 F. Supp. 2d 1227, 1233 (D. Utah 2009) (finding the government has a compelling interest in “keeping firearms out of the hands of those . . . who pos[e] a prospective risk of violence to an intimate partner or child”).


Once the government objectives have been identified as important, the court must “determine whether [the challenged statute] is substantially related” to these objectives. *Reese*, 627 F.3d at 803. The registration requirement regulates the availability of dangerous firearms, making the government aware of who owns short-barreled and sawed-off rifles. This regulation may impress upon individuals the potential dangerousness of such weapons. Nat’l Firearms Act Hearings, 73d Cong. 95 (1934) (statement of Joseph B. Keenan, Assistant Att’y Gen.). It also prohibits a person from sawing off a rifle, without authorization, to make it more concealable and potentially increases the penalties an armed criminal might face when registration requirements are violated. *Id.* at 92. Thus, the court concludes that prohibiting possession of an unregistered short-barreled rifle is substantially related to the governments’ substantial interests in preventing crime and protecting the safety of the public. In the process, 26 U.S.C. § 5861 only imposes a minimal burden on those who wish to acquire a short-barreled rifle for lawful purposes. *See Heller II*, 2011 WL 4551558, at *7 (“[B]asic [gun] registration requirements are self-evidently de minimis, for they are similar to other common registration or licensing schemes, such as voting or for driving a car, that cannot reasonably be considered onerous.”). Therefore, the statute survives intermediate scrutiny review.

CONCLUSION

Based on the record before it and for the reasons stated above, the court finds that the .22 caliber short-barreled rifle the Defendant is charged with possessing is not a weapon typically used by law-abiding citizens for lawful purposes, and thus falls outside the protections of the Second Amendment. Additionally, however, the court concludes that even if Gonzales' firearm were within the scope of the Second Amendment, 26 U.S.C. § 5861(d) survives a constitutional challenge. Accordingly, Defendant's motion to dismiss the indictment is DENIED.

SO ORDERED this 2^d day of November, 2011.

BY THE COURT:


Clark Waddoups
United States District Judge

JEREMY M. DELICINO – 9959
Attorney at Law
10 West Broadway, Suite 650
Salt Lake City, UT 84101
Telephone: (801) 364-6474
Facsimile: (801) 364-5014

FILED
U.S. DISTRICT COURT

2011 NOV -1 P 3:40

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERNESTO CASTRO-AUGUSTA,

Defendant.

ORDER EXTENDING DEADLINE

Case Number: 2:10 CR 1005

Based on the motion of the defendant and good cause appearing, it is hereby ORDERED
that the motion deadline in this case be extended to November 11, 2011.

DATED this 1 day of NOV, 2011.

BY THE COURT:



~~Honorable SAMUEL ALBA~~
~~United States Magistrate Judge~~

HONORABLE DEE BENSON
UNITED STATES DISTRICT JUDGE

KEITH A. CALL (#6708)
MELINDA K. BOWEN (#13150)
SNOW, CHRISTENSEN & MARTINEAU
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kcall@scmlaw.com

Attorneys for Spencer Minson, Trent Bodell, and Bodell VanDrimmelen & Associates

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

DARREN DIDERICKSON,

Plaintiff,

vs.

CYPRUS CREDIT UNION, ASPEN TITLE
INSURANCE AGENCY, ENVISION
LENDING GROUP, RICHARD COOK,
SPENCER MINSON, TRENT BODELL,
BODELL-VANDRIMMELEN &
ASSOCIATES, SMOOT REAL ESTATE
PC, and STAN SMOOT,

Defendants.

SCHEDULING ORDER

Civil No. 2:10cv00211

Judge: Clark Waddoups

Magistrate Judge: Brook C. Wells

Pursuant to Fed.R. Civ P. 16(b), the Magistrate Judge¹ received the Attorneys' Planning Report filed by counsel (docket #60). The following matters are scheduled. The times and deadlines set forth herein may not be modified without the approval of the Court and on a showing of good cause.

****ALL TIMES 4:30 PM UNLESS INDICATED****

- | 1. | PRELIMINARY MATTERS | DATE |
|-----------|------------------------------------|-----------------|
| a. | Was Rule 26(f)(1) Conference held? | <u>10/24/11</u> |

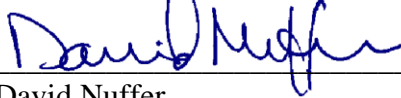
b.	Has Attorney Planning Meeting Form been submitted?	<u>10/25/11</u>
c.	Was 26(a)(1) initial disclosure completed?	<u>11/15/11</u>
2.	DISCOVERY LIMITATIONS	NUMBER
a.	Maximum Number of Depositions by Plaintiff(s)	<u>10</u>
b.	Maximum Number of Depositions by Defendant(s)	<u>10</u>
c.	Maximum Number of Hours for Each Deposition (unless extended by agreement of parties)	<u>8</u>
d.	Maximum Interrogatories by any Party to any Party	<u>25</u>
e.	Maximum requests for admissions by any Party to any Party	<u>25</u>
f.	Maximum requests for production by any Party to any Party	<u>25</u>
g.	Discovery of electronically stored information should be handled as follows: <i>Electronic information shall be provided either electronically as PDF files or by providing printed hard copies of the information. Production of electronically stored information may be made in a different format by agreement among the parties.</i>	
h.	Claim of privilege or protection as trial preparation material asserted after production shall be handled as follows: <i>If any party or representative of a party receives a document and knows or reasonably should know that the document was inadvertently produced and will be claimed to be privileged as trial preparation material, the receiving party or its representative will promptly notify the sender and return the document upon request.</i>	
3.	AMENDMENT OF PLEADINGS/ADDING PARTIES²	DATE
a.	Last Day to File Motion to Amend Pleadings	<u>01/06/12</u>
b.	Last Day to File Motion to Add Parties	<u>01/06/12</u>
4.	RULE 26(a)(2) REPORTS FROM EXPERTS³	DATE
a.	Plaintiff	<u>03/30/12</u>
b.	Defendants	<u>06/15/12</u>
c.	Counter reports	<u>07/16/12</u>
5.	OTHER DEADLINES	DATE

- | | | | |
|----|--|--|-----------------|
| a. | Discovery to be completed by: | | |
| | Fact discovery | | <u>05/31/12</u> |
| | Expert discovery | | <u>07/30/12</u> |
| b. | Deadline for filing dispositive or potentially dispositive motions | | <u>09/07/12</u> |
- 6. SETTLEMENT/ALTERNATIVE DISPUTE RESOLUTION** **DATE**
- | | | | |
|----|--|-----------|-----------------|
| a. | Referral to Court-Annexed Mediation: | <u>No</u> | |
| b. | Referral to Court-Annexed Arbitration | <u>No</u> | |
| c. | Evaluate case for Settlement/ADR on | | <u>03/30/12</u> |
| d. | Settlement probability: <i>Unknown at this time.</i> | | |
- 7. TRIAL AND PREPARATION FOR TRIAL** **TIME** **DATE**
- | | | | |
|----|---|---------------|---------------------------|
| a. | Rule 26(a)(3) Pretrial Disclosures ⁴ | | |
| | Plaintiff | | <u>01/04/13</u> |
| | Defendant | | <u>01/11/13</u> |
| b. | Objections to Rule 26(a)(3) Disclosures
(if different than 14 days provided in Rule) | | <u>00/00/00</u> |
| c. | Special Attorney Conference ⁵ on or before | | <u>01/18/13</u> |
| d. | Settlement Conference ⁶ on or before | | <u>01/18/13</u> |
| e. | Final Pretrial Conference | 2:30 p.m. | <u>02/01/13</u> |
| f. | Trial | <u>Length</u> | |
| | i. Jury Trial | <u>5 days</u> | 8:30 a.m. <u>02/11/13</u> |
- 8. OTHER MATTERS**
- Counsel should contact chambers staff of the judge presiding in the case regarding Daubert and Markman motions to determine the desired process for filing and hearing of such motions. All such motions, including Motions in Limine should be filed well

in advance of the Final Pre Trial. Unless otherwise directed by the court, any challenge to the qualifications of an expert or the reliability of expert testimony under Daubert must be raised by written motion before the final pre-trial conference.

Dated November 1, 2011.

BY THE COURT:



David Nuffer
U.S. Magistrate Judge

¹ The Magistrate Judge completed Initial Pretrial Scheduling under DUCivR 16-1(b) and DUCivR 72-2(a)(5). The name of the Magistrate Judge who completed this order should NOT appear on the caption of future pleadings, unless the case is separately assigned or referred to that Magistrate Judge.

² Counsel must still comply with the requirements of Fed. R. Civ. P. 15(a).

³ A party shall disclose the identity of each testifying expert and the subject of each such expert's testimony at least 60 days before the deadline for expert reports from that party. This disclosure shall be made even if the testifying expert is an employee from whom a report is not required.

⁴ Any demonstrative exhibits or animations must be disclosed and exchanged with the 26(a)(3) disclosures.

⁵ The Special Attorneys Conference does not involve the Court. Counsel will agree on voir dire questions, jury instructions, a pre-trial order and discuss the presentation of the case. Witnesses will be scheduled to avoid gaps and disruptions. Exhibits will be marked in a way that does not result in duplication of documents. Any special equipment or courtroom arrangement requirements will be included in the pre-trial order.

⁶ The Settlement Conference does not involve the Court unless a separate order is entered. Counsel must ensure that a person or representative with full settlement authority or otherwise authorized to make decisions regarding settlement is available in person or by telephone during the Settlement Conference.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

MICHAEL B. ROBERTSON,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

SCHEDULING ORDER

Case No. 2:10-cv-623-PMW

Magistrate Judge Paul M. Warner

Pursuant to 28 U.S.C. § 636(c) and rule 73 of the Federal Rules of Civil Procedure, both parties have consented to have a Magistrate Judge conduct all proceedings in this case, including entry of final judgment, with appeal to the United States Court of Appeals for the Tenth Circuit.¹

A case filed to review a decision of the Social Security Administration denying a claim for Social Security benefits shall be adjudicated as an appeal. Pursuant to civil rule 7-4(a) of the Rules of Practice for the United States District Court for the District of Utah, “[m]otions for judgment on the pleadings, for reversal or for summary judgment, or to ‘affirm or review the Commissioner’s decision’ are not appropriate and shall not be filed with the court.” DUCivR 7-4(a). At the same time, rule 7-4(a) “does not preclude the parties from filing other motions they deem proper under the Federal Rules of Civil Procedure.” *Id.*

¹ See docket no. 13.

In order to facilitate the disposition of this case by the court, **IT IS HEREBY ORDERED** that the parties shall file and serve briefs complying with the requirements set forth below on or before the following dates:

Plaintiff's Opening Brief: December 2, 2011

Commissioner's Answer Brief: January 6, 2012

Plaintiff's Reply Brief (if any): February 3, 2012

If this briefing schedule creates any special hardship for a party, that party should file a motion for an extension of time as soon as possible.

FORM OF BRIEFS

I. Plaintiff's Opening Brief

Pursuant to rule 7-4(a)(1), "Plaintiff shall file, and serve on opposing counsel, an Opening Brief. In the Opening Brief, [P]laintiff shall set forth the specific errors upon which [P]laintiff seeks reversal of the Commissioner's decision." DUCivR 7-4(a)(1). The Opening Brief shall briefly outline the course of the proceedings and the disposition at the administrative level and set forth a brief statement of pertinent facts. The statement of facts shall include a summary of the physical and mental impairments upon which the allegation of disability is based, as well as a brief outline of pertinent factual, medical, and vocational evidence. Each statement of fact shall be supported by citation to the pages of the administrative record where the supporting evidence may be found. The Opening brief shall contain a statement of the issues, and an argument in support of each issue asserted. Each argument shall identify the findings that Plaintiff contends are not supported by substantial evidence or the legal errors committed by the Commissioner,

with citations to the relevant pages of the administrative record and pertinent cases, rulings, and regulations.

The Opening Brief “must not exceed twenty-five (25) pages, inclusive of face sheet, table of contents, statements of issues and facts, and exhibits.” DUCivR 7-4(b). The body of the Opening Brief must be double-spaced, and all text (including footnotes) must be in 12-point font.

II. Commissioner’s Answer Brief

Pursuant to rule 7-4(a)(2), the Commissioner “shall file, and serve on opposing counsel, an Answer Brief. In the Answer Brief, [the Commissioner] shall address the errors identified by [P]laintiff.” DUCivR 7-4(a)(2). The Answer Brief shall specifically address each of the arguments made by Plaintiff in the same order they were raised in Plaintiff’s Opening Brief. The Answer Brief shall not address matters not put at issue by Plaintiff’s Opening Brief. The facts and argument contained in the Answer Brief shall cite to the pages of the administrative record containing the evidence upon which the Commissioner relies.

The Answer Brief “must not exceed twenty-five (25) pages, inclusive of face sheet, table of contents, statements of issues and facts, and exhibits.” DUCivR 7-4(b). The body of the Answer Brief must be double-spaced, and all text (including footnotes) must be in 12-point font.

III. Plaintiff’s Reply Brief

Pursuant to rule 7-4(a)(3), “Plaintiff may file, and serve on opposing counsel, a Reply Brief. In the Reply Brief, [P]laintiff shall address only those issues raised in [the Commissioner’s] Answer Brief.” DUCivR 7-4(a)(3). “Plaintiff’s Reply Brief must not exceed

ten (10) pages.” DUCivR 7-4(b). The body of the Reply Brief must be double-spaced, and all text (including footnotes) must be in 12-point font.

IV. Over-Length Briefs

If a brief is to exceed the page limitations set forth in rule 7-4(b), leave of court must be obtained prior to its filing. *See id.* A motion seeking leave to file an over-length brief

must include a statement of the reasons why additional pages are needed and specify the number required. The court will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such showing, such requests will not be approved.

Id.

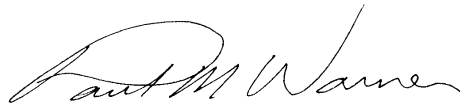
ORAL ARGUMENT

Upon receipt of the parties’ briefs, if oral argument has been requested, the court will determine whether oral argument will be scheduled. Oral argument is not a necessary part of the review process. In cases in which oral argument is held, counsel for the prevailing party shall draft a short order reflecting the court’s reasons for ruling in that party’s favor.

IT IS SO ORDERED.

DATED this 2nd day of November, 2011.

BY THE COURT:

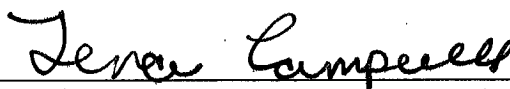
A handwritten signature in dark ink, appearing to read "Paul M. Warner", is written over a horizontal line.

PAUL M. WARNER
United States Magistrate Judge

Based upon Hearts for Hospice, LLC's unopposed motion for a further extension of time to provide the Court with a joint report, Rule 6(b) of the Federal Rules of Civil Procedure, and good cause appearing therefore:

IT IS HEREBY ORDERED that the parties may have up to and including January 15, 2011 to provide the Court with a joint report proposing a further schedule for this case.

Dated: Nov 2, 2011

A handwritten signature in cursive script, reading "Tena Campbell", is written over a horizontal line.

The Honorable Tena Campbell
United States District Court Judge

Respectfully submitted,

Dated: October 31, 2011

SHEPPARD MULLIN RICHTER & HAMPTON LLP

/s/ Brian M. Daucher

BRIAN M. DAUCHER

(Pro Hac Vice)

COUNSEL FOR PLAINTIFF
HEARTS FOR HOSPICE, LLC

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

NOV -2 2011

D. MARK JONES, CLERK
BY _____
DEPUTY CLERK

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

VISHAL SHARMA, et al,

Plaintiffs,

vs.

FREEDOM INVESTMENT CLUB, Ltd., et al.

Defendants.

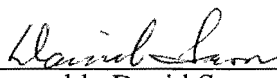
Case No.: 2:10cv01060
Judge: Hon. David Sam
(Filed electronically)

**ORDER RE EXTENSION OF
TIME TO FILE RESPONSE TO
MOTIONS TO DISMISS**

Having reviewed the *Stipulated Motion to Extend Time to File Response to Motions to Dismiss* ("Motion"), and good cause appearing therefore, the Motion is granted. Plaintiffs shall have until November 18, 2011 to file a response to motions to dismiss filed by FIC, Hyland, Gerald Abrams, and Mohawk Diversified.

DATED this 27th day of October, 2011.

U.S. DISTRICT COURT, DISTRICT OF UTAH



Honorable David Sam
District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ELIZABETH MONTOYA DE MEDINA,

Plaintiff,

v.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

**SCHEDULING ORDER
AND
ORDER FOR JOINT STATEMENT**

Case No. 2:10-cv-1120-CW-PMW

District Judge Clark Waddoups

Magistrate Judge Paul M. Warner

District Judge Clark Waddoups referred this Social Security appeal to Magistrate Judge Paul M. Warner for appropriate proceedings, pursuant to 28 U.S.C. § 636(b)(1)(B).¹ A case filed to review a decision of the Social Security Administration denying a claim for Social Security benefits shall be adjudicated as an appeal. Pursuant to civil rule 7-4(a) of the Rules of Practice for the United States District Court for the District of Utah, “[m]otions for judgment on the pleadings, for reversal or for summary judgment, or to ‘affirm or review the Commissioner’s decision’ are not appropriate and shall not be filed with the court.” DUCivR 7-4(a). At the same time, rule 7-4(a) “does not preclude the parties from filing other motions they deem proper under the Federal Rules of Civil Procedure.” *Id.*

¹ See docket no. 5.

In order to facilitate the disposition of this case by the court, **IT IS HEREBY ORDERED** that on or before **November 18, 2011**, the parties shall file a joint statement in the form attached as to the following items:

1. A statement as to whether oral argument to follow briefing is desired.
2. A statement as to whether, pursuant to 28 U.S.C. § 636(c) and rule 73 of the Federal Rules of Civil Procedure, both parties consent to have the Magistrate Judge conduct all proceedings in the case, including entry of final judgment, with appeal to the United States Court of Appeals for the Tenth Circuit. The parties are advised that they are free to withhold consent without adverse substantive consequences and that the judges shall not be informed of an individual party's position on consent unless all parties have consented to have the Magistrate Judge conduct all proceedings. *See* 28 U.S.C. § 636(c); Fed. R. Civ. P. 73(b). In the absence of consent to jurisdiction of the Magistrate Judge pursuant to 28 U.S.C. § 636(c), the Magistrate Judge will prepare a Report and Recommendation for consideration by the assigned District Judge.

IT IS FURTHER ORDERED that the parties shall file and serve briefs complying with the requirements set forth below on or before the following dates:

Plaintiff's Opening Brief:	December 2, 2011
Commissioner's Answer Brief:	January 6, 2012
Plaintiff's Reply Brief (if any):	February 3, 2012

If this briefing schedule creates any special hardship for a party, that party should file a motion for an extension of time as soon as possible.

FORM OF BRIEFS

I. Plaintiff's Opening Brief

Pursuant to rule 7-4(a)(1), "Plaintiff shall file, and serve on opposing counsel, an Opening Brief. In the Opening Brief, [P]laintiff shall set forth the specific errors upon which [P]laintiff seeks reversal of the Commissioner's decision." DUCivR 7-4(a)(1). The Opening Brief shall briefly outline the course of the proceedings and the disposition at the administrative level and set forth a brief statement of pertinent facts. The statement of facts shall include a summary of the physical and mental impairments upon which the allegation of disability is based, as well as a brief outline of pertinent factual, medical, and vocational evidence. Each statement of fact shall be supported by citation to the pages of the administrative record where the supporting evidence may be found. The Opening Brief shall contain a statement of the issues, and an argument in support of each issue asserted. Each argument shall identify the findings that Plaintiff contends are not supported by substantial evidence or the legal errors committed by the Commissioner, with citations to the relevant pages of the administrative record and pertinent cases, rulings, and regulations.

The Opening Brief "must not exceed twenty-five (25) pages, inclusive of face sheet, table of contents, statements of issues and facts, and exhibits." DUCivR 7-4(b). The body of the Opening Brief must be double spaced, and all text (including footnotes) must be in 12-point font.

II. Commissioner's Answer Brief

Pursuant to rule 7-4(a)(2), the Commissioner “shall file, and serve on opposing counsel, an Answer Brief. In the Answer Brief, [the Commissioner] shall address the errors identified by [P]laintiff.” DUCivR 7-4(a)(2). The Answer Brief shall specifically address each of the arguments made by Plaintiff in the same order they were raised in Plaintiff's Opening Brief. The Answer Brief shall not address matters not put at issue by Plaintiff's Opening Brief. The facts and argument contained in the Answer Brief shall cite to the pages of the administrative record containing the evidence upon which the Commissioner relies.

The Answer Brief “must not exceed twenty-five (25) pages, inclusive of face sheet, table of contents, statements of issues and facts, and exhibits.” DUCivR 7-4(b). The body of the Answer Brief must be double spaced, and all text (including footnotes) must be in 12-point font.

III. Plaintiff's Reply Brief

Pursuant to rule 7-4(a)(3), “Plaintiff may file, and serve on opposing counsel, a Reply Brief. In the Reply Brief, [P]laintiff shall address only those issues raised in [the Commissioner's] Answer Brief.” DUCivR 7-4(a)(3). “Plaintiff's Reply Brief must not exceed ten (10) pages.” DUCivR 7-4(b). The body of the Reply Brief must be double spaced, and all text (including footnotes) must be in 12-point font.

IV. Over-Length Briefs

If a brief is to exceed the page limitations set forth in rule 7-4(b), leave of court must be obtained prior to its filing. *See id.* A motion seeking leave to file an over-length brief

must include a statement of the reasons why additional pages are needed and specify the number required. The court will approve such requests only for good cause and a showing of exceptional circumstances that justify the need for an extension of the specified page limitations. Absent such showing, such requests will not be approved.

Id.

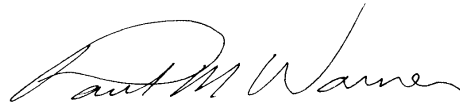
ORAL ARGUMENT

Upon receipt of the parties' briefs, if oral argument has been requested, the court will determine whether oral argument will be scheduled. Oral argument is not a necessary part of the review process. In cases in which oral argument is held, counsel for the prevailing party shall draft a short order reflecting the court's reasons for ruling in that party's favor.

IT IS SO ORDERED.

DATED this 2nd day of November, 2011.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", is written over a horizontal line.

PAUL M. WARNER
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ELIZABETH MONTOYA DE MEDINA,

Plaintiff,

v.

**MICHAEL J. ASTRUE,
Commissioner of Social Security,**

Defendant.

JOINT STATEMENT OF PARTIES

Case No. 2:10-cv-1120-CW-PMW

District Judge Clark Waddoups

Magistrate Judge Paul M. Warner

Pursuant to the order of the court, the parties state:

1. Oral argument:

Plaintiff: _____ is desired _____ is not desired

Commissioner: _____ is desired _____ is not desired

2. Pursuant to 28 U.S.C. § 636(c) and rule 73 of the Federal Rules of Civil Procedure, both parties:

_____ Consent to the United States Magistrate Judge conducting all proceedings in the case, including entry of final judgment, with appeal to the United States Court of Appeals for the Tenth Circuit.

_____ Do not consent to the United States Magistrate Judge conducting all proceedings in the case. The Magistrate Judge will prepare a Report and Recommendation for consideration by the assigned District Judge.

Plaintiff

Commissioner

Signature: _____

Signature: _____

Date: _____

Date: _____

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

District of Utah

UNITED STATES OF AMERICA

v.

Debra L. Carroll

JUDGMENT IN A CRIMINAL CASE

DISTRICT OF UTAH

Case Number: DUTX 2:11-CR-000146-001

USM Number: 17982-081

Rebecca Hyde

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) Cnt I - Felony Information☐ pleaded nolo contendere to count(s)
which was accepted by the court.☐ was found guilty on count(s)
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18USC§1343	Wire Fraud		1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)☐ Count(s) ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/27/2011

Date of Imposition of Judgment

Signature of Judge

Dee Benson

Name of Judge

U.S. District Judge

Title of Judge

10/31/2011

Date

DEFENDANT: Debra L. Carroll
CASE NUMBER: DUTX 2:11-cr-000146-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:
21 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before ~~2 p.m.~~ on 12/6/2011

☐ as notified by the United States Marshal.

☒ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Debra L. Carroll
CASE NUMBER: DUTX 2:11-cr-000146-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :
36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Debra L. Carroll

CASE NUMBER: DUTX 2:11-cr-000146-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant is to inform any employer or prospective employer of current conviction and supervision statutes.
2. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless in compliance with any established payment schedule and obtains the approval of the probation office.
3. The defendant shall provide the probation office complete access to all business and personal financial information.
4. The defendant shall not be employed in any fiduciary capacity or any position allowing access to credit or personal information of others, unless the defendants employer is fully aware of the offense of conviction and the probation office approves.
5. The defendant shall submit her person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

CRIMINAL MONETARY PENALTIES

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$	\$

- If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	\$ 0.00	\$ 0.00	

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☐ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Debra L. Carroll
CASE NUMBER: DUTX 2:11-cr-000146-001

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central Division

District of

Utah 2011 NOV - 1 P 1:44

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

Landen A. Warr

Case Number: DUTX2:11CR000160-001 DS

USM Number: 17913-081

James D. Garrett, Esq.

Defendant's Attorney

BY:
DEPUTY CLERK

THE DEFENDANT:

☒ pleaded guilty to count(s) 3 and 4 of Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC Sec. 1029(a)(2) and 2	Access Device Fraud and Aiding and Abetting		3
18 USC Sec. 1028A(a)	(1) and 2 Aggravated Identity Theft and Aiding and Abetting		4

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.


☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) remaining ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/29/2011

Date of Imposition of Judgment


Signature of Judge

David Sam

U.S. District Judge

Name of Judge

Title of Judge

November 1, 2011
Date

DEFENDANT: Landen A. Warr
CASE NUMBER: DUTX2:11CR000160-001 DS

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

24 months on Count 3 and 24 months of Count 4, to run consecutively, for a total of 48 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defenant be placed in FCI Englewood, Colorado and that he participate in the RDAP Program. The court further recommends defendant participate in educational/vocational opportunities while incarcerated.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, w ith a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Landen A. Warr
CASE NUMBER: DUTX2:11CR000160-001 DS

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Landen A. Warr

CASE NUMBER: DUTX2:11CR000160-001 DS

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless in compliance with any established payment schedule and obtains the approval of the probation office.
2. The defendant shall provide the US Probation Office complete access to all business and personal financial information.
3. The defendant shall apply all monies received from income tax refunds, lottery winnings, judgments, and/or anticipated or unexpected financial gains to the outstanding Court-ordered financial obligations. The defendant shall immediately notify the probation officer of the receipt of any indicated monies.
4. The defendant shall maintain current child support payments of \$268.00 per month, unless the amount is modified by the Office of Recovery Services. Payments are to be monitored by the probation office.
5. The defendant will submit to drug/alcohol testing under a co-payment plan as directed by the probation office.
6. The defendant shall participate in a substance-abuse evaluation and/or treatment under a co-payment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.
7. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Landen A. Warr
CASE NUMBER: DUTX2:11CR000160-001 DS

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$ 0.00	\$ 15,632.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Citi Corp Credit Services Attn: IRU (re: Sears Mastercard) P. O. Box 20523 Kansas City, MO 64195	\$4,183.81	\$4,183.81	
Love Sac 700 Canal Street 4th Floor Stamford, CT 06902	\$4,690.33	\$4,690.33	
Redbox, Loss Prevention One Tower Lane, Suite 900	\$60.66	\$60.66	
TOTALS	\$ <u>15,632.15</u>	\$ <u>15,632.15</u>	

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Landen A. Warr
CASE NUMBER: DUTX2:11CR000160-001 DS

ADDITIONAL RESTITUTION PAYEES

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Oakbrook Terrace, IL 60181			
SEALED	\$50.00	\$50.00	
Victoria's Secret	\$489.20	\$489.20	
P. O. Box 659728			
San Antonio, TX 78265-9728			
JC Penney Co, Inc.	\$245.74	\$245.74	
6501 Legacy Drive			
Plano, TX 75024			
Wells Fargo Bank	\$5,912.41	\$5,912.41	
5201 W. Amelia Earhart Drive			
Salt Lake City, Utah 84116			

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Landen A. Warr
CASE NUMBER: DUTX2:11CR000160-001 DS

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 15,862.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Special Assessment Fee of \$200 is due immediately. Restitution ordered in the amount of \$15,632.00 is ordered jointly and severally with co-defendant, in the amount of \$5.00 per month while incarcerated and \$100 per month upon release from incarceration.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Brecka Geese 2:11-CR-000160-002 DS \$15,632.00

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 8 - 11

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

UNITED STATES DISTRICT COURT

FILED
U.S. DISTRICT COURT

Central Division

District of

2011 NOV - Utah 1:44

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

V.

Brecka S. Geese

BY:

Case Number: DUTX2:11CR000180-002

USM Number: 17914-081

Ronald S. Fujino, Esq.

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 3 and 4 of Indictment

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC Sec. 1029(a)(2)	Access Device Fraud		3
18 USC Sec. 1028A(a)	Aggravated Identity Theft		4
(10)			

The defendant is sentenced as provided in pages 2 through 11 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☒ Count(s) remaining _____ ☐ is ☒ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

9/28/0201

Date of Imposition of Judgment

David Sam

Signature of Judge

David Sam

Name of Judge

U.S. District Judge

Title of Judge

November 1, 2011

Date

DEFENDANT: Brecka S. Geese
CASE NUMBER: DUTX2:11CR000160-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

24 months for Count 3 and 24 months for Count 4, to run consecutively, for a total of 48 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in FCI Victorville, California and that she participate in the RDAP program. The court further recommends defendant participate in educational/vocational opportunities while incarcerated.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Brecka S. Geese
CASE NUMBER: DUTX2:11CR000160-002

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Brecka S. Geese
CASE NUMBER: DUTX2:11CR000160-002

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall refrain from incurring new credit charges or opening additional lines of credit unless in compliance with any established payment schedule and obtains the approval of the probation office.
2. The defendant shall provide the US Probation Office complete access to all business and personal financial information.
3. The defendant shall apply all monies received from income tax refunds, lottery winnings, judgments, and/or anticipated or unexpected financial gains to the outstanding Court-ordered financial obligations. The defendant shall immediately notify the probation officer of the receipt of any indicated monies.
4. The defendant shall maintain current child support payments of \$193.00 per month, unless the amount is modified by the Office of Recovery Services. Payments are to be monitored by the probation office.
5. The defendant will submit to drug/alcohol testing under a co-payment plan as directed by the probation office.
6. The defendant shall participate in a substance-abuse evaluation and/or treatment under a co-payment plan as directed by the probation office. During the course of treatment, the defendant shall not consume alcohol nor frequent any establishment where alcohol is the primary item of order.
7. The defendant shall participate in a mental health treatment program under a co-payment plan as directed by the probation office, take any mental health medications as prescribed, and not possess or consume alcohol, nor frequent businesses where alcohol is the primary item of order, during the course of treatment or medication.
8. The defendant shall submit her person, residence, office, or vehicle to a search, conducted by the probation office at reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

DEFENDANT: Brecka S. Geese
CASE NUMBER: DUTX2:11CR000160-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$ 0.00	\$ 15,632.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Citi Corp Credit Services Attn: IRU (re: Sears Mastercard) P. O. Box 20523 Kansas City, MO 64195	\$4,183.81	\$4,183.81	
Love Sac 700 Canal Street 4th Floor Stamford, CT 06902	\$4,690.33	\$4,690.33	
Redbox, Loss Prevention One Tower Lane, Suite 900	\$60.66	\$60.66	
TOTALS	\$ 15,632.15	\$ 15,632.15	

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Brecka S. Geese
CASE NUMBER: DUTX2:11CR000160-002

ADDITIONAL RESTITUTION PAYEES

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Oakbrook Terrace, IL 60181			
SEALED	\$50.00	\$50.00	
Victoria's Secret	\$489.20	\$489.20	
P. O. Box 659728			
San Antonio, TX 78265-9728			
JC Penney Co., Inc.	\$245.74	\$245.74	
6501 Legacy Drive			
Plano, TX 75024			
Wells Fargo Bank	\$5,912.41	\$5,912.41	
5201 W. Amelia Earhart Drive			
Salt Lake City, Utah 84116			

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Brecka S. Geese
CASE NUMBER: DUTX2:11CR000160-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 15,832.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
Special Assessment Fee of \$200 is due immediately. Restitution is ordered in the amount of \$15,632.00, jointly and severally with co-defendant, to be paid at the minimum rate of \$5.00 per month while incarcerated, and \$100.00 a month upon release from incarceration, or as otherwise determined by the probation office.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Landen Warr 2:11-cr-00160-001 DS \$15,632.00

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 8 - 11

are the
Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED
U.S. DISTRICT COURT

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

2011 NOV -2 P 2:47

IN THE UNITED STATES DISTRICT COURT

NOV 01 2011

DISTRICT OF UTAH

DISTRICT OF UTAH, CENTRAL DIVISION

BY D. MARK JONES, CLERK

DEPUTY CLERK

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LAURA LILLIAN SUAREZ a.k.a. LAURA
SUARES a.k.a. LAURA LILLIAN SUAREZ
VILLAFANA a.k.a. LAURA SUAREZ,

Defendant.

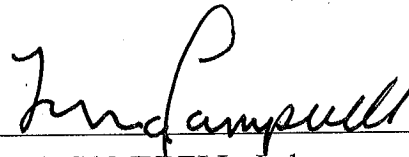
2:11CR214 TC

ORDER OF RELEASE AND
DISMISSAL

Having received the dismissal of the Indictment by the United States against Laura Lillian Suarez, and good cause appearing therefore, the Court hereby orders the United States Marshal to release Laura Lillian Suarez from Marshal's custody to be delivered into the custody of Immigration and Customs Enforcement pursuant to the immigration detainer and for proceedings with Immigration and Customs Enforcement regarding her immigration and/or deportation status.

DATED this 1 day of November, 2011.

BY THE COURT:



TENA CAMPBELL, Judge
United States District Court

Michael J. Langford, Utah State Bar #9682
LAW OFFICE OF MICHAEL J. LANGFORD, P.C.
341 South Main Street, Suite 406
Salt Lake City, UT 84111
Telephone: (801) 328-4090
Fax: (801) 746-5613
Email: Michael@mjl-law.com

Attorney for Stephen A. Freestone

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH
NOV 01 2011
BY D. MARK JONES, CLERK
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

vs.

STEPHEN A. FREESTONE,

Defendant.

**ORDER GRANTING
MOTION TO CONTINUE DEADLINES
AND TRIAL DATES**

Case No. 2:11-CR-00284

Magistrate Judge Paul M. Warner

PURSUANT to the Defendant's *Motion to Continue Jury Trial* filed herein by the
Defendant and it appearing that good cause exists; therefore,

FINDINGS

The Court finds as follows:

1. On April 11, 2011, Mr. Freestone was charged by information with two-counts. The charges against Mr. Freestone are as follows: Count I and II - 26:7203 WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION pursuant to 26 U.S.C. 7203.
2. On August 24, 2011, the Court set a three-day Trial in the above-entitled matter to begin on November 8, 2011, before Hon. Paul M. Warner, Magistrate Judge of the United States Federal District Court for the District of Utah.
3. Pursuant to 18 U.S.C. 3161(h)(7)(B)(i), the failure to grant a continuance in the

proceeding would be likely to make a continuation of the proceeding impossible and result in a miscarriage of justice, for the following reasons: counsel requires additional time to review the discovery, investigate the case, and consult with the Defendant regarding the case, the discovery, his rights and more importantly potential resolutions of the case that have come to light.

4. Pursuant to 18 U.S.C. 3161(h)(7)(B)(iv), the failure to grant a continuance in the case, which taken as a whole, is not so unusual or complex as to fall within the provisions of 18 U.S.C. 3161(h)(7)(B)(ii), would unreasonably deny the Defendant's counsel reasonable time to review the discovery, evidence and facts in the case, and to prepare for trial, taking into account the exercise of due diligence and the seriousness of the case.

5. The defense does not perceive that there would be any prejudice to either the defendant or the government if the Court were to extend the time for the trial of the above-entitled matter. The defense has consulted with the attorney for the government, Stewart C. Walz, Esq., Assistant United States Attorney, and confirmed the government does not perceive a continuance will cause prejudice to either the government or the Defendant if the matter is continued.

6. The prosecuting attorney has indicated that there is no objection to this motion.

7. The Defendant has been consulted with regard to the filing of this motion.

8. The Defendant has been advised of his right to a Speedy Trial.

9. Further, pursuant to grounds set forth above, the potential need for the filing of additional motions and requests, and the need for further investigation it is understood and agreed that the time granted by the Court extending the Jury Trial in this matter shall be excluded under the Speedy Trial Act, 18 U.S.C. 3161(h)(7)(A) and (B)(i) & (iv), as the ends of justice served by the exclusion outweigh the best interest of the public and the Defendant in a speedy trial.

10. The Defendant will, through counsel file a demand for speedy trial if and when the defendant believes such a demand is warranted.

Consideration of the Factors

The Court has considered the factors pursuant to the Sixth Amendment guarantees as to the right to a speedy trial as articulated in *United States v. Toombs*, 574 F.3d 1262, 1274 (10th Cir. 2009). Those four considerations, in light of the factors, are: (1) the length of the delay, (2) the reason for the delay; (3) the defendant's assertion of his right, and (4) any prejudice to the defendant.

The four considerations taken together weight heavily in favor of a continuance as follows:

a. The Length of the Delay.

The factors that weigh in favor of the length of the continuance include the need for counsel to have sufficient time to review the discovery, investigate the case, and consult with the defendant regarding the case, the discovery, his rights and more importantly potential resolutions of the case that have come to light.

These factors warrant a continuance because the length of the delay is reasonable and appear to be no longer than necessary for the purposes stated, which have been clearly articulated in writing.

b. The Reason for the Delay.

The factors that weigh in favor of the reason for the continuance include those as set forth above and the reasonable time that is required in order for counsel to achieve those objectives and fulfill those duties required for representation in a federal felony criminal case. In addition, the Defendant has not been able to meet with counsel as frequently as would be needed as he lives out of state. He cannot afford to travel to Utah back to review discovery with his attorney and thus review of the discovery has taken additional time.

These factors warrant a continuance because reasons for the delay have been clearly articulated in writing and are grounded in the right of the defendant to receive sound advice from competent counsel and assistance in the preparation and execution of the right to trial; and the

benefits that will flow to the defendant in making an informed, knowing and voluntary decision are in the defendant's best interest.

c. The Defendant's Assertion of this Right.

The Defendant, through counsel, has clearly articulated the desire to continue this matter and the waiver of the right to a speedy trial. The assertion has been stated in writing in this motion. Furthermore, counsel of record represents the defense will file a demand for speedy trial if and when the Defendant believes that such a demand is warranted.

These factors warrant a continuance because the waiver of the right to a speedy trial is clear from the written pleadings before the Court. Furthermore, the written pleadings clearly articulate that should a speedy trial be deemed warranted by the defense they will affirmatively assert the right in writing.

d. The Prejudice to the Defendant.

The factors that weigh in favor of a continuance are that defendant has affirmatively asserted in the written pleadings that the continuance in this matter will not cause prejudice to the Defendant. Furthermore, the pleadings show the defense has consulted with the attorney for the government and confirmed the government does not perceive a continuance will cause prejudice to either the government or the Defendant if the matter is continued. Furthermore, all of the factors set forth above reflect a benefit will flow to the Defendant if the continuance is granted.

These factors warrant a continuance because all parties have directly considered the issue of prejudice. Moreover, the parties acknowledge that prejudice will not arise and the defense asserts that a benefit will arise should the continuance be granted.

Now, therefore;

IT IS ORDERED that the Defendants Motion to Continue the Jury Trial be, and hereby is, granted.

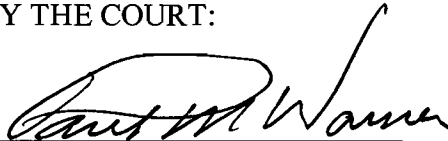
IT IS FURTHER ORDERED that the Court excludes the time extending the Jury Trial in this matter pursuant to the Speedy Trial Act, 18 U.S.C. 3161(h)(8)(A) and (B)(i) & (iv).

IT IS HEREBY ORDERED that the Jury Trial heretofore set for November 8, 2011 is hereby continued; and

IT IS FURTHER ORDERED that said Jury Trial is hereby reset for the 10th day of January, 2012, at 9:00 o'clock a m. or as soon thereafter as the Court may hear the same.

ISSUED this 15 day of Nov, 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul M. Warner", is written over a horizontal line.

Honorable Judge Paul M. Warner
United States District Court Judge
District of Utah

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

NOV 02 2011

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BY D. MARK JONES, CLERK
DEPUTY CLERK

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Case No. 2:11-CR-293-001
)	
v.)	CONSENT TO ENTRY OF PLEA
)	OF GUILTY BEFORE THE
JOHN ALFRED CULP)	MAGISTRATE JUDGE AND
)	ORDER OF REFERENCE
Defendant.)	

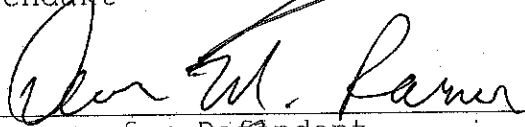
Pursuant to 28 U.S.C. § 636(b)(3), the defendant, JOHN ALFRED CULP, after consultation and agreement with counsel, consents to United States Magistrate Judge Samuel Alba accepting defendant's plea of guilty and to the Magistrate Judge conducting proceedings pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The defendant also acknowledges and understands that sentencing on his plea of guilty will be before the assigned District Judge after a pre-sentence investigation and report, and compliance with Fed.R.Crim.P. 32.

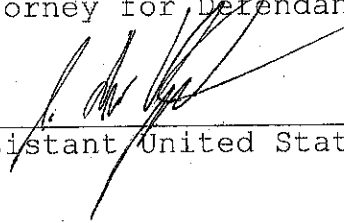
The United States, by and through the undersigned Assistant United States Attorney, consents to the Magistrate Judge conducting plea proceedings pursuant to Fed.R.Crim.P. 11, and accepting the defendant's plea of guilty as indicated above, pursuant to such

proceedings.

DATED this 2nd day of November, 2011.


Defendant


Attorney for Defendant


Assistant United States Attorney

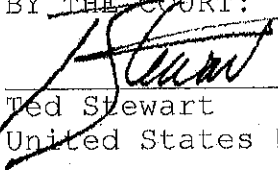
ORDER OF REFERENCE

Pursuant to 28 U.S.C. § 636(b)(3), and the consent of the parties above mentioned, including the defendant,

IT IS HEREBY ORDERED that United States Magistrate Judge Samuel Alba shall hear and conduct plea rendering under Fed.R.Crim.P. 11, and may accept the plea of guilty from the defendant pursuant thereto after full compliance with Fed.R.Crim.P. 11.

DATED this 1st day of November, 2011

BY THE COURT:


Ted Stewart
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

FILED
U.S. DISTRICT COURT
2011 NOV -2 P 2: 50
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

HILARIO MEJIA-MENDOZA,

Defendant.

ORDER TO CONTINUE
JURY TRIAL

BY: _____
DEPUTY CLERK

Case No. 2:11 CR 0502 TC

Based on the Motion to Continue the Jury Trial filed by defendant, Hilario Mejia-Mendoza, in the above-entitled case, and good cause appearing, the court makes the following findings:

1. The parties are engaged in plea negotiations that may obviate the need for a trial in this matter. The parties need additional time to review provided discovery in the case. Defense counsel will need additional time to conduct investigation that may impact the case and because of being added to this case recently, will need more time to familiarize herself with the facts of this case.
2. Assistant United States Attorney, Andrew Choate has been contacted by defense counsel and does not object to the continuance.
3. The ends of justice are best served by a continuance of the trial date, and the ends of justice outweigh the interest of the public and the Defendant to in speedy trial.

Based on the foregoing findings, it is hereby:

ORDERED

The Jury Trial previously scheduled to begin on November 4, 2011, is hereby continued to the 9 day of January, 2012, at 830am. Pursuant to 18 U.S.C. § 3161(h), the Court finds that the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date set forth above is excluded from speedy trial computation for good cause.

Dated this 2 day of Nov, 2011.

BY THE COURT:

final continuance
Tena Campbell

TENA CAMPBELL

United States District Court Judge

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES of AMERICA,

Plaintiff,

v.

TERRY PAUL OGDEN,

Defendant.

:
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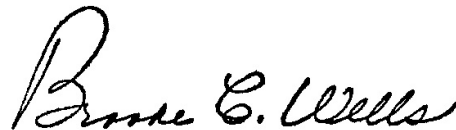
**ORDER ALLOWING THE
DEFENDANT TO APPEAR AT
THE NOVEMBER 16, 2011
HEARING THROUGH COUNSEL**

Case No. 2:11-CR-00543

Judge Ted Stewart

Based upon Motion of Defendant, and good cause appearing therefor, this Court
HEREBY ORDERS that the defendant, Terry Paul Ogden, be excused from appearing at the November
16, 2011 hearing and that he is allowed to appear through counsel.

DATED this 2nd day of November, 2011.



Brooke C. Wells
United States Federal Magistrate Judge

UNITED STATES DISTRICT COURT

Central Division

District of

Utah

UNITED STATES OF AMERICA
V. **JUDGMENT IN A CRIMINAL CASE**
FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH

Jose Arturo Najera-Peralta

NOV -2 2011

Case Number: DUTX1:11CR000694-001

D. MARK JONES, CLERK USM Number: 18408-081

BY DEPUTY CLERK L. Clark Donaldson, FPD
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of Felony Information

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
8 USC Sec. 1326	Re-entry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 9 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/1/2011

Date of Imposition of Judgment

David Sam

Signature of Judge

David Sam

Name of Judge

U.S. District Judge

Title of Judge

November 2, 2011

Date

DEFENDANT: Jose Arturo Najera-Peralta
CASE NUMBER: DUTX1:11CR000694-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

15 months.

☒ The court makes the following recommendations to the Bureau of Prisons:

The court recommends defendant be placed in a facility in Southern California and that he participate in educational/occupational opportunities as well as drug counseling while incarcerated.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Jose Arturo Najera-Peralta
CASE NUMBER: DUTX1:11CR000694-001

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

36 months.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Jose Arturo Najera-Peralta
CASE NUMBER: DUTX1:11CR000694-001

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall not illegally reenter the United States. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: Jose Arturo Najera-Peralta
CASE NUMBER: DUTX1:11CR000694-001

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 0.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ 0.00	\$ 0.00
---------------	---------	---------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Pages 6 - 9

are the

Statement of Reasons,
which will be docketed
separately as a sealed
document

FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

NOV - 2 2011

D. MARK JONES, CLERK
DEPUTY CLERK

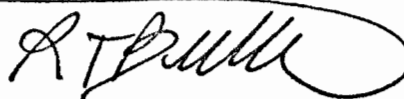
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,	ORDER GRANTING LEAVE TO DISMISS
Plaintiff,	: MISDEMEANOR INFORMATION
v.	: Case No. 2:11-CR-776
JUSTIN S. METZLER,	: Creating a Hazard and a Nuisance
Defendant.	: (43 U.S.C. § 1701 and 43 C.F.R.
	: 8365.1-4(a)(2))
	: Magistrate Judge Robert T.
	: Braithwaite

Based upon the Motion of the United States of America, and for good cause appearing, the Court hereby grants the government leave to dismiss the above-captioned Misdemeanor Information, without prejudice, under Rule 48(a) of the Federal Rules of Criminal Procedure.

DATED this 2nd day of November, 2011.

BY THE COURT:



United States Magistrate

DAVID B. BARLOW, United States Attorney (#13117)
MICHAEL J. ROMANO, Special Assistant United States Attorney
STUART A. WEXLER, Special Assistant United States Attorney
Attorneys for the United States of America
185 South State Street, #300
Salt Lake City, Utah 84111
Telephone: (801) 524-5682

FILED
U.S. DISTRICT COURT

2011 NOV - 1 A 11: 45

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

APRIL J. RAMPTON,

Defendant.

Case No. 2:11-cr-00812-DB

FIRST ORDER EXCLUDING
TIME UNDER THE SPEEDY
TRIAL ACT

Magistrate Judge: Samuel Alba

At the initial appearance for Defendant April J. Rampton on October 27, 2011, Defendant Rampton refused to acknowledge the Court and was detained pending a detention hearing set before this Court on October 31, 2011, at 10:00 A.M. At the detention hearing, Defendant Rampton was arraigned and entered a plea of not guilty. The Court made the following additional determinations:

1. Defendant Rampton is proceeding *pro se* in this matter. Federal Public Defender Kristen Angelos is appointed as standby counsel for Defendant Rampton.

2. After the taking of testimony and the hearing of argument, Defendant Rampton was released with conditions set forth in a separate Order dated October 31, 2011.

3. The Government's discovery in this matter consists of approximately four (4) banker's boxes of material.

4. The Government will provide a copy of its discovery to Defendant Rampton no later than November 10, 2011. An additional copy of the Government's discovery will be provided to standby counsel, Ms. Angelos.

5. A status conference to report on matters of discovery and motions intended to be filed by the Parties is set in this matter for January 10, 2012, at 10:00 A.M.

FINDINGS AND ORDER

Based upon the information presented to the Court about the nature of the case, statements by the Government regarding the scope and timing of discovery, that the Defendant will be proceeding *pro se*, and the Court being familiar with the file herein, the Court makes the following Findings:

1. The Court finds that, given the nature of the prosecution and the volume of discovery in this case, Defendant and standby counsel require additional time to prepare for trial, and proceeding to trial absent adequate time to prepare would result in a miscarriage of justice.

2. The Court finds that, in view of the nature of the prosecution and the volume of discovery in this matter, the failure to grant additional time for discovery would deny Defendant and standby counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

3. The Court further finds that, for the reasons discussed above, the ends of justice would be best served by a status hearing on January 10, 2012. The ends of justice so served outweigh the best interests of the Defendant, the public or the United States in a speedy trial. Therefore, the entire time from the Defendant's initial appearance up through and including the January 10, 2012, status hearing date is excludable from any calculation required by the Speedy Trial Act.

4. The Court also finds, in accordance with the provisions of 18 U.S.C. §§ 3161 (h)(7)(A), (h)(7)(B)(i), and (h)(7)(B)(iv), that the ends of justice, the public interest, and the Defendant's interests are served by these delays. Providing proper time to prepare for trial outweighs the best interest of the public and the Defendant in a speedy trial.

Based upon the foregoing Findings, it is hereby ORDERED:

1. A status hearing to report on matters of discovery and motions intended to be filed by the Parties is set in this matter for January 10, 2012, at 10:00 A.M..

2. All time from October 27, 2011 (the date of Defendant Rampton's initial appearance), up through and including January 10, 2012 (or whatever date the status hearing actually occurs), is excludable and is hereby excluded from any calculation required by the Speedy Trial Act, Title 18 U.S.C. §§ 3161(h)(7)(A), (h)(7)(B)(i), and (h)(7)(B)(iv).

DATED this 1st day of November, 2011.

BY THE COURT:



SAMUEL ALBA
United States Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 1, 2011, a copy of the foregoing [PROPOSED] FIRST ORDER EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT was caused to be served by first class mail, postage prepaid, to the Defendant and standby counsel for the Defendant at the addresses listed below:

April J. Rampton
P.O. Box 982
Santa Clara, UT 84765

Kristen R. Angelos
Utah Federal Defender Office
American Towers Plaza
46 West Broadway
Suite 110
Salt Lake City, UT 84101

/s/ Stuart A. Wexler
STUART A. WEXLER
Special Assistant United States Attorney

FILED
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

2011 NOV -2 P 2:50

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

UNITED STATES OF AMERICA,
Plaintiff,

v.

Case #: 2:11-CR-00879-DAK-02

MARIA ZUGRAV,
Defendant

**ORDER CLARIFYING PREVIOUSLY ENTERED ORDER
SETTING CONDITIONS OF RELEASE**

THIS CAUSE came to be heard before the Court upon the filing of a Stipulation by the parties, the Court having reviewed same and the file, and being otherwise fully advised in the premises, it is therefore,

ORDERED AND ADJUDGED:

1. The Court's previously entered Order setting conditions of release as to the Defendant, Maria Zugrav, shall not be interpreted as placing the Defendant on house arrest. The Defendant's travel is restricted to the Middle District of Florida and to the District of Utah, however, she is not required to obtain permission from Pre-Trial Services to leave her residence for everyday purposes. In addition, the Defendant will not be required to wear a GPS leg monitor.

2. Defendant, Maria Zugrav, is required to notify Pre-Trial Services when she travels to the District of Utah.

DONE AND ORDERED this 21 day of ^{November}~~October~~, 2011


UNITED STATES DISTRICT JUDGE

Copies furnished to:

William Hanlon, Esquire, attorney for Maria Zugrav
Marquest J. Meeks, Esquire, Trial Attorney, Department of Justice
Pre-Trial Services, Middle District of Florida

KOREY D. RASMUSSEN (6129)
SNOW, CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
Post Office Box 45000
Salt Lake City, Utah 84145-5000
Telephone: (801) 521-9000
Facsimile: (801) 363-0400
Attorneys for Defendant Lock & Load Industries LLC

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE SUN PRODUCTS CORPORATION, a
Delaware corporation,

Plaintiff,

vs .

LOCK & LOAD INDUSTRIES LLC, a
California limited liability company,

Defendant.

ORDER FOR EXTENSION

Case No. 2:11-cv-00316

District Judge Clark Waddoups

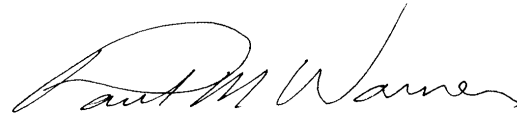
Magistrate Judge Paul M. Warner

Pursuant to the stipulation of the parties, and good cause appearing therefor, the Court
hereby

ORDERS, ADJUDGES AND DECREES that defendant Lock & Load Industries LLC is granted until November 14, 2011, to file its reply memorandum in support of their Motion for Leave to File Third-Party Complaint.

DATED this 2nd day of November, 2011.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner", written in black ink.

PAUL M. WARNER
United States Magistrate Judge

APPROVED AS TO FORM:

STOEL RIVES LLP

/s/ Cameron L. Ward
Mark E. Hindley
Cameron L. Ward
Attorneys for Plaintiff The Sun Products
Corporation

Signature affixed by email permission

IN THE UNITED STATES DISTRICT COURT
CENTRAL DIVISION, DISTRICT OF UTAH

PAUL STEPHENSON,	:	Civil No. 2:11-cv-00341
Plaintiff,	:	ORDER
vs.	:	JUDGE DALE KIMBALL
FEDERAL BUREAU OF INVESTIGATION,	:	MAGISTRATE JUDGE BROOKE C. WELLS
Defendants.		

Currently before the Court is plaintiff Paul Stephenson's "Motion For Entry of Default" against defendant the Federal Bureau of Investigation ("FBI").¹ In his motion, Mr. Stephenson moves for default based upon the FBI's alleged failure to answer his complaint within sixty (60) days.²

By way of background, on July 11, 2011, Mr. Stephenson filed his prior "Motion For Entry of Default" which this Court failed to grant because plaintiff had not perfected service on the United States.³ On July 21, 2011, Chief Deputy Clerk Louise York

¹Document Number 9.

²Id.

³Document Number 6.

mailed correspondence to Mr. Stephenson with specific information on how to serve an agency of the United States.⁴ Ms. York invited plaintiff to re-file his motion for default after filing proper service on defendant.⁵

At this time, Mr. Stephenson has not properly served the FBI, and accordingly his motion for entry of default is denied. Pursuant to Federal Rule of Civil Procedure 4(i)(2), in order to serve an agency of the United States, a party must:

serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer or employee.⁶

Additionally, as a party proceeding *in forma pauperis* the provisions of 28 U.S.C. § 1915 apply and provide for dismissal of a case, at any time, if the Court determines the complaint “fails to state a claim on which relief may be granted.”⁷ Upon review of Mr. Stephenson’s complaint, this court finds that the statements made therein fail to state a proper claim upon which relief may be granted. Accordingly, the Court now issues the following ruling and order:

1. Mr. Stephenson’s Motion For Entry of Default is DENIED;
2. Plaintiff shall have thirty (30) days within which to amend his complaint to state a proper cause of action and to properly serve defendant in compliance with Federal Rule of Civil Procedure 4(i)(2).

⁴ Document Number 7.

⁵Id.

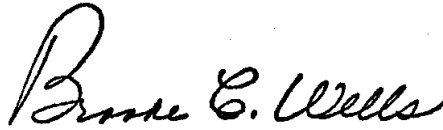
⁶Fed. R. Civ. P. 4(i)(2).

⁷28 U.S.C. § 1915.

3. Failure to do the above shall result in the dismissal of plaintiff's complaint.

DATED this 2nd day of November, 2011.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive style with a large, looped initial 'B'. Below the signature is a horizontal line.

Brooke C. Wells
United States Magistrate Judge

FILED
U.S. DISTRICT COURT

2011 NOV -1 A 7:35

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

Submitted by:

Mark M. Bettilyon (4798)
Samuel C. Straight (7638)
Mica McKinney (12163)
Ray, Quinney & Nebeker
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
Email: mbettilyon@rqn.com
Email: ssstraight@rqn.com
Email: mmckinney@rqn.com

Attorneys for Plaintiff CAO Group

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CAO Group, a Utah Corporation,

Plaintiff,

vs.

GE Lighting, a Delaware Corporation, et al.

Defendants.

~~PROPOSED~~
ORDER GRANTING EXTENSION TO
RESPOND TO COUNTERCLAIM

Case No. 2:11-cv-426

Judge Dee Benson

Based upon the parties' stipulated motion and for good cause appearing,

IT IS HEREBY ORDERED that Plaintiff, CAO Group, may have an extension of time to
and including November 7, 2011 in which to reply to the Counterclaim filed by Defendant
Toshiba International Corporation.

DATED this 31st day of October, 2011.

BY THE COURT:

A handwritten signature in cursive script that reads "Dee Benson". The signature is written in black ink and is positioned above a horizontal line.

Honorable Dee Benson

CERTIFICATE OF SERVICE

I certify that the foregoing [PROPOSED] **ORDER GRANTING EXTENSION TO RESPOND TO COUNTERCLAIM**, was filed with the clerk of the court using the CM/ECF system on the 27th day of October, 2011, and will be sent electronically to the all registered participants as identified on the notice of electronic filing.

/s/ Jean Peterson _____

1157329

2011 NOV -1 A 7:35

Mark M. Bettilyon (4798)
Samuel C. Straight (7638)
Mica McKinney (12163)
Ray, Quinney & Nebeker
36 South State Street, Suite 1400
P.O. Box 45385
Salt Lake City, Utah 84145-0385
Telephone: (801) 532-1500
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Email: ssstraight@rqn.com
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Attorneys for Plaintiff Cao Group

Alan L. Sullivan (3152)
Amber M. Mettler (11460) DISTRICT OF UTAH
Snell & Wilmer L.L.P. BY: 200
15 West South Temple, Suite 200 DEPUTY CLERK
Gateway Tower West
Salt Lake City, Utah 84101-1004
Telephone: (801) 257-1900
Email: asullivan@swlaw.com
Email: amettler@swlaw.com

Benjamin Hershkowitz (Admitted Pro Hac Vice)
Gibson Dunn & Crutcher LLP
200 Park Ave
New York City, NY 10016-0193
Telephone: (212) 351-4000
Email: bhershkowitz@gibsondunn.com

Attorneys for Defendant Sharp Electronics Corporation

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CAO Group, a Utah Corporation,

Plaintiff,

vs.

GE Lighting, a Delaware Corporation, et al.

Defendants.

**ORDER GRANTING EXTENSION TO
RESPOND TO COMPLAINT**

Case No. 2:11-cv-426

Honorable Judge Dee Benson

Based upon the stipulation of the parties and for good cause appearing,

IT IS HEREBY ORDERED that defendant Sharp Electronics Corporation may have an extension of time to and including November 11, 2011 in which to answer, move or otherwise

respond to the Complaint.

DATED this 31st day of October, 2011.

BY THE COURT:



Honorable Judge Dee Benson

APPROVED AS TO FORM AND CONTENT:

/s/ Mica McKinney

Electronically signed with permission
from Mica McKinney

Mark M. Bettilyon (4798)

Samuel C. Straight (7638)

Mica McKinney (12163)

Ray Quinney & Nebeker (SLC)

36 State Street, Suite 1400

Salt Lake City, Utah 84145-0385

Telephone: (801) 323-3307

Attorneys for Plaintiff Cao Group

/s/ Amber M. Mettler

Alan L. Sullivan (3152)

Amber M. Mettler (11460)

Snell & Wilmer L.L.P.

15 West South Temple, Suite 1200

Gateway Tower West

Salt Lake City, Utah 84101-1004

Telephone: (801) 257-1900

Benjamin Hershkowitz (Pro Hac Vice)

Gibson Dunn & Crutcher LLP

200 Park Ave

New York City, NY 10016-0193

Telephone: (212) 351-2410

*Attorneys for Defendant Sharp Electronics
Corporation*

CERTIFICATE OF SERVICE

I certify that the foregoing **ORDER GRANTING EXTENSION TO RESPOND TO COMPLAINT**, was filed with the clerk of the court using the CM/ECF system on the 27th day of October, 2011, and will be sent electronically to the all registered participants as identified on the notice of electronic filing.

/s/ Amber M. Mettler

Yuval H. Marcus (Pro Hac Vice)
Cameron S. Reuber (Pro Hac Vice)
William R. Thornewell II (Pro Hac Vice)
LEASON ELLIS
1 Barker Avenue, Fifth Floor
White Plains, New York 10601
T.914.821.9075
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Marcus@LeasonEllis.com
Reuber@LeasonEllis.com
Thornewell@LeasonEllis.com

Mark F. James (5295)
Mitchell A. Stephens (11775)
HATCH, JAMES & DODGE, P.C.
10 West Broadway, Suite 400
Salt Lake City, Utah 84101
Telephone: (801) 363-6363
Facsimile: (801) 363-6666
MJames@hjdllaw.com

Attorneys for Defendants Online Coral Calcium, Inc. and Robert Smutek.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

CARTER-REED COMPANY, LLC, a Utah
limited liability company; and ZOLLER
LABORATORIES, LLC, a Utah limited
liability company

Plaintiffs,

vs.

ONLINE CORAL CALCIUM, INC., a New
York corporation, and ROBERT SMUTEK, an
individual

Defendants.

**ORDER GRANTING
MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO ANSWER, REPLY,
OR OTHERWISE PLEAD TO FIRST
AMENDED COMPLAINT**

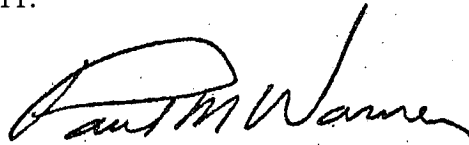
Civ. No. 2:11-cv-00442-PMW

Magistrate Judge Paul M. Warner

Based on the Stipulated Motion for Extension of Time Within Which to Answer, Reply, or Otherwise Plead to First Amended Complaint and for good cause appearing:

IT IS HEREBY ORDERED that Defendants Online Coral Calcium, Inc. and Robert Smutek shall have through and including November 23, 2011 within which to answer, reply, or otherwise plead to Plaintiffs' First Amended Complaint in this matter.

DATED this 2nd day of November, 2011.

A handwritten signature in black ink, appearing to read "Paul M. Warner". The signature is fluid and cursive, with a large initial "P" and "W".

United States District Court for the District of Utah

J. MARK GIBB, mgibb@djplaw.com (State Bar No. 5702)
DAVID W. TUFTS, dtufts@djplaw.com (State Bar No. 8736)
CLINTON E. DUKE, cduke@djplaw.com (State Bar No. 9784)
JASON P. NIXON, jnixon@djplaw.com (State Bar No. 11417)
Attorneys for ZAGG Intellectual Property Holding Co., Inc.
DURHAM JONES & PINEGAR, P.C.
111 East Broadway, Suite 900
Salt Lake City, UT 84111
(801) 415-3000

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

ZAGG INTELLECTUAL PROPERTY
HOLDING CO., INC., a Nevada corporation,

Plaintiff,

v.

NLU PRODUCTS, L.L.C., a Utah limited liability company; WRAPSOL, L.L.C., a Delaware limited liability company; XO SKINS, LLC, a Utah limited liability company; FUSION OF IDEAS, INC., a California corporation; GHOST ARMOR LLC, an Arizona limited liability company; CLEAR-COAT LLC, a Pennsylvania corporation; CASE-ARI, LLC, a Georgia limited liability company; UNITED SGP CORP., a California corporation; PEDCO, LLC, an Arizona limited liability company; BEST SKINS EVER, a Colorado company; STEALTH GUARDS, a Michigan company; SKINOMI, LLC, a California company; CELLAIRIS, a Georgia company; and VIRTUOSITY PRODUCTS, LLC, a Utah limited liability company.

Defendants.

**ORDER GRANTING STIPULATION
TO EXTEND TIME FOR DEFENDANT
CELLAIRIS TO RESPOND TO
AMENDED COMPLAINT**

Civil No. 2:11-cv-00517-PMW
Honorable Magistrate
Judge Paul M. Warner
(Jury Trial)


Based on the stipulated motion to extend the time for Defendant Cellairis to respond to the Amended Complaint and for good cause appearing:

IT IS HEREBY ORDERED that defendant Cellairis shall have through and including Tuesday, November 15, 2011 to answer, reply, or otherwise plead the Plaintiff's Amended Complaint.

IT IS SO ORDERED.

DATED this 2nd day of November, 2011.

BY THE COURT:

A handwritten signature in cursive script, reading "Paul M. Warner".

PAUL M. WARNER
United States Magistrate Judge

FILED
U.S. DISTRICT COURT

2011 NOV -1 P 3:40

DISTRICT OF UTAH

BY: DEPUTY CLERK

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DENNIS LOOMIS and LISA LOOMIS,
Plaintiffs,

vs.

AURORA LOAN SERVICES LLC, GMAC
MORTGAGE LLC, GMAC MORTGAGE
CORPORATION, and DOES 1-5 inclusive,
Defendants,

ORDER FOR ENLARGEMENT OF TIME

Case No. 2:11-cv-00685

Judge Dee Benson

Based upon the Stipulated Motion for Enlargement of Time filed by Plaintiffs Dennis Loomis and Lisa Loomis and Defendant Aurora Loan Services LLC ("Aurora"),

IT IS HEREBY ORDERED that Plaintiffs shall have up to and including Monday, November 14, 2011, to file a memorandum in opposition to Aurora's Motion to Dismiss Plaintiff's Complaint [ECF No. 15].

DATED this 1 day of November, 2011.



Dee Benson
United States District Judge

FILED
U.S. DISTRICT COURT
UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION
2011 NOV - 21 A 10:54

<p>DATA SYSTEMS INTERNATIONAL, a Utah corporation, BY: <u>DEPUTY CLERK</u> Plaintiff, v. EMPOWERED SOLUTIONS GROUP, a Utah corporation; BRIAN BINGEL, an individual; and JOHN DOES 1, 2 and 3, Defendants.</p>	<p>Case No. 2:11-cv-00686-DS</p>
--	----------------------------------


DISMISSAL ORDER

Having considered the parties Stipulated Motion for Dismissal in accordance with the terms of their Settlement Agreement,

IT IS HEREBY ADJUDGED and DECREED that:

All claims asserted in the above entitled action are dismissed with prejudice, the parties to bear their own fees and costs. It is further decreed that this Court retains jurisdiction over this case and the parties for the purposes of enforcement of the terms of the Settlement Agreement.

Dated this 1st day of November, 2011, by:


United States District Court Judge

FILED
U.S. DISTRICT COURT

2011 NOV -2 P 2:49

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH,

DISTRICT OF UTAH

BY: _____
DEPUTY CLERK

CENTRAL DIVISION

PROFICIO BANK, a Utah Chartered
Commercial Bank,

Plaintiff

v.

THE WIRE SOURCE, LLC, a Georgia limited
liability company, BRADLEY J. RUSSELL;
SOUTHINGTON INDUSTRIAL PARK, LLC;
a Georgia limited liability company; METALS
DIRECT, LLC, a Georgia limited liability
company; and JOHN DOES 1-10,

Defendants.

ORDER GRANTING STIPULATED
MOTION FOR EXTENSION OF TIME IN
WHICH TO RESPOND TO AMENDED
COMPLAINT

Civil No. 2:11-CV-00808

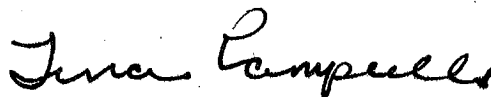
Judge Tena Campbell

Based on Defendant Southington Industrial Park, LLC's Stipulated Motion for Extension
of Time in which to Respond to Amended Complaint,

IT IS HEREBY ORDERED that Defendant Southington Industrial Park, LLC shall have
up to and including December 5, 2011 to file its Answer or other response to the Amended
Complaint.

Dated this 2 day of Nov, 2011.

BY THE COURT:



Judge Tena Campbell

FILED
U.S. DISTRICT COURT

2011 NOV -1 P 3:40

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

JODI HOSKINS,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ORDER TO RESPOND

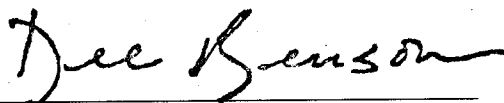
Case No. 2:11-cv-00810

Judge Dee Benson

Before the court is Petitioner's motion pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. Pursuant to Rule 5 of the Rules Governing Section 2255 Proceedings for the United States District Courts, the court ORDERS the United States Attorney to respond to the motion within forty-five days of the date of this Order.

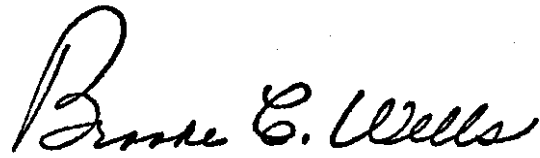
IT IS SO ORDERED.

DATED this 1st day of November, 2011.



Dee Benson
United States District Judge

DATED this 2nd day of November, 2011.

A handwritten signature in black ink, reading "Brook C. Wells". The signature is fluid and cursive, with the first name "Brook" being more prominent than the last name "Wells".

BROOK C. WELLS
UNITED STATES MAGISTRATE

Approved as to form:

/s/ Brian S. King
Brian S. King
Attorneys for Plaintiffs